

1988 March 28

[TRIANAFYLLIDES, P., A. LOIZOU, LORIS, STYLIANIDES, PIKIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Appellants,

v.

ANDREAS ANASTASSIADES AND OTHERS,

Respondents - Counter-Appellants.

(Revisional Jurisdiction Appeal No. 320).

Coup d'Etat—Actions of "Government" appointed thereunder—Lack of legitimacy—They are in law non existent.

5 *Res Judicata—Statement by counsel that by reason of a revocatory decision taken by the "Council of Ministers" appointed during the Coup d'Etat, recourses directed against decision to dismiss applicants (taken by the lawful Council of Ministers) were abated—Agreement of Court with such statement recorded in the minutes—Such apparent agreement did not form part of the formal order or its reasons—No res judicata created.*

10 *Judgments—Recourse for annulment—Judgment dismissing the recourse—Whether respondent can file an appeal—Question left open.*

On 30.7.73 a number of police officers and prison wardens were dismissed for dereliction of duty by decision of the Council of Ministers. Those dismissed filed a recourse. On 1.3.74 judgment was reserved.

15 On 15th July, 1974, the Greek junta, aided by collaborators in Cyprus, staged a coup d'etat. A puppet of the military, Nicolaos Sampson, assumed the Presidency. On 23rd July, 1974, Nicolaos Sampson vacated the office of President. Nevertheless the Ministerial Council nominated by Nicolaos Sampson continued in Office until 8th August, 1974.

This "council" revoked the decision of 30.7.73.

On 1.3.75 counsel for applicants and the Deputy Attorney-General stated that the decision of 2.8.74 sapped the recourses of their subject-matter. As a result the Court concluded thus:

"In the light of what counsel have submitted we agree that their common view as to the outcome of these cases is correct; so, the reserved judgment will not be delivered and the cases are hereby struck out as abated".

The petition of the appellants that followed, namely that they should be paid their salaries for the period 30.7.73 - 2.8.74 was turned down.

Hence a recourse to this Court. The trial Judge dismissed the recourse on the ground that the decision of 30.7.73, had been annulled. Hence the appeal by the Republic and the cross-appeal by applicants.

Held, (1) The decision of 30.7.73 had not been annulled. On the contrary, the recourses directed against it were struck out.

(2) The apparent agreement by the Court with the views voiced by counsel of the parties respecting the effect of the decision of 2.8.74, does not form part of the formal order of the Court or the reasons for the order made. Nor was the validity of the decision of 2.8.74 debated at any length before the Court, nor did the views expressed reflect the considered opinion of the Court.

The decision of the Court did not in any way validate and did not affirm as a valid exercise of lawful authority the decision of 2.8.74.

(3) The genesis of laws, rules and regulations, is dependent on observance of the Constitution and laws made thereunder. There is no room for legitimacy outside that framework of authority. The coup D'etat government and its organs wholly lacked legitimacy and operated in the vacuum of lawlessness. In any event, Law 57/75 eradicated from the realm of lawful action every decision of the coup d' etat government and its organs. The "decision" of 2.8.74 should be treated as inexistent. With the dismissal of the recourses directed against the validity of that decision of the Council of Ministers, and the expiration of the time limited by article 146.3 of the Constitution, the appellants, forfeited the right to question the validity of the decision of 30.7.73. Hence the premise of their petition for the payment of their salaries was ill founded in law.

(4) The order of dismissal of the recourse is sustained though for differ-

ent reasons. The appeal must also be formally dismissed for it does not seek a reversal of the outcome of the recourses.

*Appeal and cross-appeal dismissed.
No order as to costs.*

5 *Cases referred to:*

Andreou and Others v. The Republic (1975) 3 C.L.R. 108;

Pieris v. Republic (1983) 3 C.L.R. 1054;

Christodoulou v. Republic (1984) 3 C.L.R. 865;

Anastassiou v. Demetriou and Another (1980) 1 C.L.R. 589;

10 *Gregoropoulos v. The Republic* (1984) 3 C.L.R. 449;

Liasi v. Attorney-General and Another (1975) 3 C.L.R. 558;

Chrysanthou and Others v. The Republic (1986) 3 C.L.R. 1128.

Appeal and cross-appeal.

15 Appeal and cross-appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 4th July, 1983 (Revisional Jurisdiction Cases Nos. 129/75 - 136/75 and 143/75 - 147/75)* whereby the recourses of the applicants (cross- appellants) against the refusal of the Council of Ministers to pay to them their salaries in view of the fact that the decision to dismiss them was revoked, were dismissed.

20 *N. Charalambous*, Senior Counsel of the Republic, for the appellants.

A. Markides with E. Efthymiou, for the respondents (cross-appellants).

25 *Cur. adv. vult.*

* (Reported in (1984) 3 C.L.R. 312).

TRIANTAFYLLIDES P. : The judgment of the Court will be delivered by Pikiis J.

PIKIS J.: On 30th July, 1973, a number of police officers and prison wardens were dismissed for dereliction of duty. The counter-appellants were among those dismissed for complicity in acts directed against constitutional order. They disputed the validity of the decision of the Council of Ministers ordering their dismissal and challenged it before the Supreme Court. Because of their importance the cases were heard directly by the Full Bench of the Supreme Court. The hearing of the cases was concluded on 1.3.74 and judgment was reserved thereafter.

On 15th July, 1974, the Greek junta, aided by collaborators in Cyprus, staged a coup d' etat. The coup resulted in the overthrow of the President of the Republic and the toppling of the constitutional government of the country. A puppet of the military, Nicolaos Sampson, assumed the Presidency and purported to exercise the functions of President. He named a Council of Ministers which took Office and like Sampson himself usurped the State power by the assumption of Ministerial duties and those of the Council of Ministers. On 19th July, 1974, Turkey invaded the country threatening, in addition to constitutional order, the physical integrity of the country and its citizens.

On 23rd July, 1974, Nicolaos Sampson vacated the office of President. Nevertheless the Ministerial Council nominated by Nicolaos Sampson continued in Office until 8th August, 1974. Before their replacement the Ministerial Council that assumed Office on the assumption of power by the military, took a number of decisions, including the decision to revoke the dismissal of the policemen and prison wardens who were dismissed on 30.7.73. They declared their dismissal void ab initio. This decision was published on 2nd August, 1974. The appellants and those affected by this decision returned to their work and were once again put on the payroll of government. On 14th August, 1974, the country was devastated by the second round of the Turkish invasion aimed at the partition of the Country. It is difficult to describe in

5 words the calamity that afflicted the country; thousands of people were displaced from their homes and human misery overshadowed the beautiful landscape of the country. That the country survived and legal order was restored, will, no doubt, be recorded in times to come as a rare human achievement and as a tribute to the civilisation and endurance of the people of this country. Constitutional order was fully restored with the return to the country of President Makarios in December, 1974. The government of the country embarked on a massive effort to provide shelter and relief for the displaced and heal the wounds inflicted by the barbarity of the invasion of the country.

15 On 1st March, 1975, counsel for the appellants and other dismissed policemen and prison wardens who challenged the dismissals of 30.7.73, signified to the Court that they would not pursue their recourses to conclusion. A statement was made to the Court to the effect that the decision of 2.8.74 had sapped the recourses of their subject matter. The view taken of the effect of the decision of 2.8.74 was espoused by the Deputy Attorney-General who agreed with the statement that the decision of 2.8.74 had wholly revoked the decision of 30.7.73. In view of the position of the parties the Court concluded thus:

25 "In the light of what counsel have submitted we agree that their common view as to the outcome of these cases is correct; so, the reserved judgment will not be delivered and the cases are hereby struck out as abated."

30 And the Court adjudged the Republic to pay the costs of the applicants. The formal order made was the following: "Cases struck out as abated. Order for costs as above." - *Telemachos Andreou and Others v. Republic (Council of Ministers)* (1975) 3 C.L.R. 108 Thereafter the parties to the above proceedings petitioned the Council of Ministers to authorise the payment of their salaries for the period that elapsed between the period of their dismissal - 30th July, 1973 - and the restoration to their duties on 2.8.74. The Council of Ministers dismissed their claim. The reasons for rejection of the demand for monetary restoration are stat-

ed in the decision of the Council of Ministers dated 15th May, 1975. Far from acknowledging that the decision of 2.8.74 had the effect of revocation of the decision of 30.7.73, the Council of Ministers asserted that the applicants were taken back and were allowed to return to their duties in the spirit of reconciliation proclaimed after the restoration of constitutional order in the interest of political unity and as a gesture of good will.

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The acceptance of the appellants back to their duties was described as an act of epiky. On the other hand, the finances of the country and the demands upon them, and the Turkish invasion, made it impossible to consider the making of any gratis payment to them.

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The decision of 15th May, 1975, was challenged before the Supreme Court. It was the subject matter of the first instance proceedings that resulted in the judgment that is in issue in the appeal before us. The applicants contended that the decision of 15th May, 1975, was executory albeit invalid for breach of the decision of the Council of Ministers of 2.8.74 and disregard of the judgment of the Court in *Andreou*, supra. The learned trial Judge dismissed the recourse on the ground that the decision in *Andreou* had annulled the decision of 30.7.73, thereby paving the ground for the institution of an action for damages under para. 6 of article 146 of the Constitution. Evidently, the learned trial Judge had treated the observations of the Court, of which he was a member, in *Andreou* as equivalent to a declaration of invalidity of the administrative act of 30.7.73. If that were the effect of the ruling of the Court in *Andreou*, the learned trial Judge would have been plainly right. But as it is, that was not the effect of the order made in *Andreou*. On the contrary, the recourses were dismissed - struck out. Notwithstanding the favourable outcome of the recourses for the Republic, signified by the dismissal of the recourses, an appeal was mounted designed to challenge the reasoning of the Court, particularly the depiction of the effect in *Andreou* and, secondly, the implications in law of the decision of 2.8.74. The unsuccessful applicants also launched a counter appeal questioning the dismissal of the recourses. In their conten-

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tion the decision of the Council of Ministers of 15th May, 1975, was executory and its nullification by the Court a condition precedent to the institution of civil proceedings for the recovery of damages under par. 6 of article 146 of the Constitution.

5 The central issues in the appeal are the following two: -

(A) The effect of the decision in Andreou and,

(B) the implications in law of the decision taken by the Council of Ministers appointed by Nicolaos Sampson, of 2.8.74.

10 (A) *The ruling of the Court in Andreou*: If the ruling of the Court in the above case amounted to a declaration of nullity of the decision of 30th July, 1973, the doctrine of *res judicata*, as applied in administrative law, (For a discussion of *res judicata* see the cases of *Pieris v. Republic* (1983) 3 C.L.R. 1054 and *Christodoulou v. Republic* (1984) 3 C.L.R. 865), would preclude any
15 further examination of the legal implications of the decision of 2nd August, 1974. On the other hand, if the ruling of the Court merely signified the dismissal of the recourses the Court must proceed and ponder the implications of the decision of 2.8.74.

20 The apparent agreement by the Court with the views voiced by counsel of the parties respecting the effect of that decision, does not form part of the formal order of the Court or the reasons for the order made. Nor was the validity of the decision of 2.8.74 debated at any length before the Court, nor did the views expressed reflect the considered opinion of the Court. What was struck out
25 was not the decision of 30.7.73 but the recourses; in other words, the outcome of the recourse did not in any way invalidate or set aside the decision of the Council of Ministers of 30.7.73. Evidently, the learned trial Judge considered the striking out of the recourses as tantamounting to a declaration of invalidity of the decision of 30.7.73.

30 In sum, the decision of the Court did not in any way validate and did not affirm as a valid exercise of lawful authority the deci-

sion of 2.8.74. That being the case we are duty bound to examine the effect in law of that decision for the petition of the appellants to the Council of Ministers for payment of their salaries following the decision of 2.8.74, premised on the assumption that that decision obliterated the decision of 30.7.73. Evidently, the Council of Ministers did not accept the soundness of that premise. In fact, they directly disputed it. The decision records that the appellants were admitted back to their duties not as a result of any revocation of the decision of 30.7.73 but in the spirit of the reconciliation proclaimed in the interest of unity and as an act of epiky. Therefore, it is of the first importance for the determination of the outcome of the proceedings to decide the effect in law of the decision of 2.8.74. For if it had the effect of revoking the decision of 30.7.73, it becomes apparent that the decision of the Council of Ministers of 15.5.75 was founded on a misconception of the law.

(B) *The validity of the decision 2.8.74 taken by the Council of Ministers appointed by Nicolaos Sampson:*

In *Anastassiou v. Demetriou and Another* [(1980) 1 C.L.R. 589 (See also *Gregoropoulos v. Republic* (1984) 3 C.L.R. 449) the Supreme Court pronounced that the coup d' etat government and its organs wholly lacked legitimacy and operated in the vacuum of lawlessness created after the overthrow of the constitutional government of the country. The genesis of laws, rules and regulations, is dependent on observance of the Constitution and laws made thereunder. There is no room for legitimacy outside that framework of authority. Consequently, the appeal Court sustained the decision of the District Court of Larnaca (A decision decided by myself when I was a member of that Court) and the reasoning given in support of the decision that superior orders could not legitimise action outside the realm of constitutional order. A similar conclusion with regard to the legitimacy of the organs of the coup d' etat government was reached by the Supreme Court in the exercise of its original jurisdiction, in *Aristides M. Liasi v. Attorney-General of the Republic and Another* (1975) 3 C.L.R. 558 (A decision of A. Loizou, J.).

5 The judicial pronouncement on the illegitimacy of the actions of the coup d' etat government and its organs, declaratory as it was, of fundamental legal norms was also statutorily proclaimed to be the law by the enactment of The Coup d' Etat (Special Provisions) Law, 1975 (57/75). The law declared that every action of the coup d' etat government made in purported exercise of authority or power lacks legitimacy and is inexistent in law. Coup d' etat government means; according to the law, the President who illegally and unconstitutionally assumed authority (Nicolaos Sampson) and the Ministers unconstitutionally and illegally appointed by him, including the Under - Secretary to the President and every member of it. The effect of the law was judicially examined by the full Bench of the Supreme Court in *Chrysanthou and Others v. Republic* (1986) 3 C.L.R. 1128. There was consensus of opinion (reflected in majority and minority judgments) that Law 57/75 eradicated from the realm of lawful action every decision of the coup d' etat government and its organs. The law refers indistinguishably to actions of the coup d' etat government and encompasses action taken individually as well as collectively. The decision of 2.8.74 was a collective decision of the coup d' etat government, that is, of the Ministers appointed by Nicolaos Sampson and, as such, was wholly invalid and should in law be treated as inexistent. Consequently, the decision of 2.8.74 did not have the effect suggested by counsel to the Court in the case of 25 *Andreou*, supra. In fact, it was inexistent in law and left intact the decision of the Council of Ministers of 30.7.73. With the dismissal of the recourses directed against the validity of that decision of the Council of Ministers, and the expiration of the time limited by article 146.3 of the Constitution, the appellants forfeited the right to question the validity of that decision. Hence the premise of their petition for the payment of their salaries was ill founded in law. The decision of the Council of Ministers of 15.5.75, on the other hand, was based on a proper appreciation of the law. Upon this conclusion the claim for lost salaries collapses.

35 With this conclusion in mind, the counter - appeal is dismissed. The order of dismissal of the recourses is sustained though for different reasons. The appeal (We have refrained from

pronouncing on the amenity of the Republic, a succesful party at first instance, to mount an appeal) must also be formally dismissed for it does not seek a reversal of the outcome of the re-courses.

In the result: the appeal and cross - appeal are dismissed.

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Let there be no order as to costs.

*Appeal and cross-appeal dismissed.
No order as to costs.*