[VASSILIADES, TRIANTAFYLLIDES, MUNIR, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant,

v.

ANDREAS A. MARKOULLIDES AND ANOTHER.
Respondent.

(*Civil Appeal No.* 4561).

Constitutional and Administrative Law—Liability for administrative acts or decisions (or omissions) annulled under the provisions of paragraph 4 *of Article* 146 *of the Constitution—The matter is exclusively and specifically governed by the provisions of paragraph* 6 *of Article* 146 *of the Constitution—To the exclusion, therefore, of Article* 172 *of the Constitution—"Just and equitable damages" to be awarded to the "person aggrieved" by such acts or decisions so declared to be null and void as aforesaid Meaning and effect of those words in paragraph* 6 *of Article* 146—*Principles applicable—Proper defendant in such proceedings i.e. in such action instituted in a civil Court under the aforesaid paragraph* 6 *for the recovery of "just and equitable damages as aforesaid"—Measure of such damages—In assessing such damages the culpability of the Administration as well as the culpability of the "person aggrieved" should be taken into account—In the instant case the culpability of the person so aggrieved by the administrative decision as subsequently annulled on a recourse under Article* 146 *was found to have been greater than the culpability of the Republic acting through its organ viz. the Public Service Commission Therefore, the damages awarded were accordingly considerably reduced Principles laid down by the French Council of state in its decision (arrêt)* Deberles *of the 7th April* 1933, applied—*And in a case like the present one, where the administrative decision, annulled under paragraph* 4 *of Article* 146 *of the Constitution, is the termination by the Public Service Commission, acting within its competence under Articles* 122 *and* 125 *of the Constitution, of the service of respondent* 1, *a clerical employee of the Electricity Authority of Cyprus, respondent* 2—*The matter must be dealt with without reference to the law of master and servant relating to wrongful dismissal—And the proper defendant in such proceedings for damages as aforesaid is only the Republic of Cyprus—To the exclusion of the*

Public Service Commission, which is not a juridical person—And to the exclusion, as well, of the Electricity Authority of Cyprus, notwithstanding that the said dismissal was decided upon by the Public Service Commission on the recommendation of the Electricity Authority--The decision complained of is that of the Public Service Commission, acting within its competence under Articles 122 *and* 125 *of the Constitution—And which Commission is a state organ, functioning in the Republic and for the Republic--And the aforesaid recommendation of the Electricity Authority is not binding on the Commission. Therefore, in the instant case the Republic only could be sued for damages under Article* 146, *paragraph* 6 *of the Constitution—"Organ authority or person concerned"—Article* 146, *paragraph* 6 *of the Constitution.*

Liability—Liability, inter alia, *of the Republic under Article* 146, *paragraph* 6 *of the Constitution--Such liability quite distinct from the liability of the Republic under Article* 172 *of the Constitution.*

Electricity Authority of Cyprus--Employees in the Service of the said Authority--Termination of service of such employee by decision of the Public Service Commission acting within its competence under Articles 122 *and* 125 *of the Constitution—Decision subsequently annulled under paragraph* 4 *of Article* 146 *of the Constitution by the Supreme Constitutional Court Claim of the person so aggrieved for damages governed by Article* 146, *paragraph* 6 *of the Constitution--Proceedings could only be instituted against the Republic—"Just and equitable damages"—Assessment--Principles applicable—Factors to be taken into account—Principles of the law of master and servant relating to wrongful dismissals, irrelevant—See, also, under Constitutional and Administrative Law above.*

Practice—Action for damages under Article 146 *paragraph* 6 *of the Constitution—Proper defendant—Joinder of parties—See under Constitutional and Administrative Law, Electricity Authority, above.*

Republic—Liability of the Republic—Articles 146, *paragraph* 6, 172 *of the Constitution—See above.*

Paragraphs 1, 4 and 6 of Article 146 of the Constitution provide: "1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person exercising any executive

or administrative authority is contary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person ".

"4. Upon such a recourse the Court may, by its decision-

(*a*) confirm, either in whole or in part, such decision or act or omission ; or (*b*) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever ; or (*c*) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed ".

"6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a Court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the Court or to be granted such other just and equitable remedy as such Court is empowered to grant ".

Article 172 of the Constitution provides :

"172. The Republic shall be liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic.

A law shall regulate such liability ".

Paragraph 1 of Article 125 of the Constitution provides :

"1. Save where..... ....,it shall be the duty of the Public Service Commission to make the allocation.....and to appoint,..... ....and exercise disciplinary control over, including *dismisval or removal from* office of, public officers".

And by Article 122 of the Constitution "public officer" means "the holder .....of a public office"; And "public office " means "an office in the public service"; and "public service" means "any service under the Republic..... and includes service under the Cyprus Broadcasting Corporation, the Cyprus Inland Telecommunications Authority and *the Electricity Authority of Cyprus* ".

It should be noted that under section 57 of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) actions by and against the Republic should be instituted by and against the Attorney-General of the Republic

Respondent 1 was in February 1961 a clerical employee of the Electricity Authority of Cyprus, respondent 2. On the 2nd February, 1961, respondent 1 was transferred to Kakopetria as from the 1st March, 1961. Respondent 2 by his letter of the 13th February 1961 refused to accept his said transfer. On the 16th February, 1961, the Authority, respondent 2, replied to this letter of respondent 1 informing him that unless he complied with his instructions as to the transfer, he was liable to be dismissed. On the same day the Electricity Authority, respondent 2, wrote to the Public Service Commission informing it of the position and asking it to take disciplinary action against respondent 1. The Commission wrote to respondent 1 on the 3rd March, 1961, asking him to appear before the Commission to explain the reasons for his refusal to comply with the transfer. Respondent 1 failed to report for duty on the 1st March, 1961, at Kakopetria or at any time thereafter, and on the 8th March, 1961, he appeared before the Public Service Commission and was questioned in respect of his refusal to take up duty at Kakopetria. The Commission considered the matter and decided that the transfer was reasonable and that he (respondent 1) should take up duties at Kakopetria. It informed respondent 1 of its decision there and then, whereupon respondent 1 categorically stated to the Commission that he was unable to proceed to Kakopetria. On the same day, viz. the 8th March, 1961 the Public Service Commission considered the said refusal of respondent 1 to proceed to Kakopetria in accordance with its decision set out above decided that he should be dismissed forthwith. On the same day a letter of dismissal was sent to respondent 1.

On the 4th April, 1961, respondent 1 filed a recourse under Article 146 of the Constitution against the Republic through the Public Service Commission challenging his said transfer and dismissal. The Supreme Constitutional Court delivered judgment in that recourse on the 29th January, 1962 (see 3 R.S.C.C. 30) whereby the decision of the Public Service Commission, to transfer the then applicant (now respondent 1) was confirmed, but its decision to dismiss him was annulled as having been taken in a manner incompatible with the principles of natural justice.

On the 31st January, 1962, respondent 2 wrote to respondent 1, stating that he was required to take up duties at Kakopetria as from the 5th February, 1962, respondent 1 did so. Respondent 1 as from the 1st March, 1961, to the 5th February, 1962, failed to render any services to the Authority, respondent 2, at Kakopetria, where he had been transferred ; nor did at any time offer to render any services to respondent 2 at Kakopetria during that period.

On the 20th February 1962, respondent 1 filed, as plaintiff action No. 752/62 in the District Court of Nicosia against (1) The Electricity Authority of Cyprus (respondent 2) (2) The Public Service Commission and (3) The Attorney-General of the Republic (i.e. against the Republic v. *supra*) as defendants. He claimed damages for the termination of his services, as subsequently annulled by the Supreme Constitutional Court as aforesaid.

The trial Court dismissed the said action as against the Public Service Commission (holding that the Commission not being an independent juridical person, cannot be held liable as such), as well as against the Electricity Authority (respondent 2), and gave judgment for £849.778 mils with costs against the Republic (i.e. against the Attorney-General of the Republic, now appellant) under Article 172 of the Constitution (*supra*). The said amount of £849.778 mils represents the salary and bonuses that would have been received by the plaintiff-respondent 1 during the period he remained out of the service of respondent 2 (viz. the period 1st March 1961-5th February, 1962), had his services not been terminated by the Public Service Commission as aforesaid.

The Attorney-General of the Republic now appeals against that judgment of the trial Court and the Supreme Court, in allowing the appeal :

Held, (1) (*a*) the first issue which arises for determination in this appeal is whether or not it was open to the trial Court to give judgment, in a case such as the present one, against the Republic on the basis of Article 172 of the Constitution (*supra*).

(*b*) Once the termination of the services of the respondent 1 was a matter within the competence under Article 146 of the Constitution and, moreover, such termination had been annulled by means of a recourse filed under the said Article,

there was no question of proceeding against the Republic at all under Article 172 of the Constitution (*supra*), but the remedy open to respondent 1 was under paragraph 6 of Article 146 of the Constitution (*supra*). This view is amply supported by the judgment of the Supreme Constitutional Court in the case *Kyriakides and the Republic* 1 R.S.C.C. 66 at p. 74, which judgment was confirmed in the above respect by the Supreme Constitutional Court in the case *Frahim and the Republic* 4 R.S.C.C. 121, at p. 124.

(2) (*a*) The correct view is that an action as the present one, under Article 146 paragraph 6 of the Constitution (*supra*) cannot be filed against respondent 2 (the Electricity Authority) and that the Republic was the only proper defendant in the matter.

(*b*) Under paragraph 6 of Article 146 (*supra*) legal proceedings may be instituted, if the claim of "person aggrieved" by a decision which has been declared to be void in a recourse under such Article is not met to his satisfaction by the organ, authority or person concerned. In the light of the whole context of Article 146, and bearing also in mind that in essence paragraph 6 of the said Article is an indemnification provision forming part of the scheme of Article 146 we came to the conclusion that the organ, authority or person concerned" must mean the organ, authority or person the decision of which has been annulled under paragraph 4 of Article 146 (*supra*) with the result of giving rise to a claim under paragraph 6 of the said Article 146.

(*c*) In the present instance the termination of the services of respondent 1 was decided upon by the Public Service Commission and it is the decision of the Commission which was declared to be void by the Supreme Constitutional Court. It is such decision which has rendered respondent 1 "person aggrieved" in the sense of Article 146, paragraph 6 (*supra*). It is therefore, against the Republic that the claim of respondent 1 under paragraph 6 of Article 146 lies in view of the fact that the Public Service Commission is a state organ functioning in the Republic, for the Republic.

(3) (*a*) We consider as largely irrelevant the law of master and servant in a case such as the present one, we are concerned here with the claim of a citizen, respondent 1, for damages because of the consequences of a decision of a public organ the Public Service Commission— which de-

cision has been declared, on recourse under Article 146, to be void ; such claim is not based on the law of master and servant at all, but on his right to make such claim as provided for by paragraph 6 of Article 146 of the Constitution (*supra*).

(*b*) Nor is it material that when the services of respondent 1 were terminated by the Public Service Commission, he was in the employment of the Electricity Authority of Cyprus—respondent 2—or that such termination was recommended by the said Authority -respondent 2—to the Commission. In terminating the services of respondent 1, the Commission was exercising a constitutional function given to it under Article 125 of the Constitution (*supra*) ; though such function was being exercised with an employee of respondent 2 as its subject matter and though the recommendations of the said respondent was a factor to be duly taken into account, nevertheless, the said function was being exercised as part of the constitutional structure, for the purposes of the State and on behalf of the Republic, and not of the Electricity Authority of Cyprus, respondent 2 : also the ultimate decision lay only with the Commission, because the recommendations of respondent 2 were not binding on it.

(*c*) Moreover, the procedural, irregularity which led to the annulment of the decision to terminate the services of the respondent 1 was a matter solely due to the course of action adopted by the Public Service Commission.

(*d*) It is, therefore, the Republic, and the Republic only, which could be sued in these proceedings.

4 (*a*) There can be no doubt that respondent 1 is a "person aggrieved", in the sense of paragraph 6 of Article 146 of the Constitution, by the said decision of the Public Service Commission to terminate his services, because, as a result of such decision, he remained out of employment, receiving no salary, for a period from the 8th March, 1961, until the 5th February, 1962. He was not granted any other restitution from the Republic ; so he is entitled to damages.

(*b*) But we cannot assess such damages on the basis of the measure of damages which would have been adopted had this been a case of wrongful dismissal in the realm of the law of master and servant.

(*c*) Damages in a case such as the present one, have to be "just and equitable damages" as laid down in paragraph

6 of Article 146 of the Constitution (*supra*), and, in interpreting such expression, we find great assistance in the course adopted by the French Council of State in the *Deberles* (7th April, 1933). It was held, there, in a case of similar nature to the present one, that in assessing damages in relation to a decision which has been declared void, the respective importance of the culpability of the Administration and of the claimant must be taken into account.

(*d*) Taking into account, *inter alia*, that the termination of the services of respondent 1 was decided upon because he unjustifiably refused to obey his transfer to Kakopetria and taking into account that such transfer was found to be valid by the Supreme Constitutional Court, and that the termination of the services of respondent 1 was found to be invalid only because the proper procedure was not followed for the purpose, we take the view that this is a case where the culpability of respondent 1 in the matter is *much greater* than the *culpability of the Republic, through the Public Service Commission.*

5 (*a*) Bearing in mind the above and also what would have been ordinarily due to respondent 1 had this been a simple case of wrongful dismissal would have been the sum of £849.678 mils as agreed between the parties before the Trial Court, we take the view that there is on record sufficient material before us enabling us to proceed to reassess what is due to respondent 1 as "just and equitable damages" within paragraph 6 of Article 146 (*supra*) and that in the unusual circumstances of this case an amount of £300 represents what are "just and equitable damages" under that paragraph 6 of Article 146, to respondent 1 in this case.

(*b*) In the result, therefore, this appeal is allowed to the extent to which it relates to judgment having been given against the Republic under Article 172 of the Constitution (*supra*) and, instead, judgment is given against the Republic—the appellant—under Article 146, paragraph 6 of the Constitution for £300. The Republic should bear half the costs of the appellant in the Court below and here with no order as to costs, either here or in the Court below, in respect of respondent 2.

Appeal allowed to the extent as aforesaid. Order as to costs as aforesaid.

Cases referred to :

Kyriakides and the Republic, 1 R.S.C.C. 66, at p. 74 ;

Vrahimi and the Republic, 4 R.S.C.C. 121, at p. 124 ;

The decision (arrêt) of the French Council of State : Deberles, of the 7th April, 1933.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Evangelides P.D.C. & Ioannides D.J.) dated the 15th September, 1965, (Action No 782/62) whereby the plaintiff's claim against defendants 1 and 2 was dismissed and defendant No. 3 was adjudged to pay to him the amount of £849 678 mils, by way of damages which he sustained as a result of his dismissal by the Public Service Commission.

C. Tornaritis, Attorney-General of the Republic, with *L. Loucaides*, Counsel of the Republic, for appellant.

L. Clerides with *S. Demetriou*, for respondent 1.

Sir P. Cacoyiannis, for respondent 2.

Cur. adv. vult.

VASSILIADES, J. : The judgment of the Court will be read by Mr. Justice Triantafyllides. Mr. Justice Munir, who is absent, has informed us that he concurs in the result of this appeal.

TRIANTAFYLLIDES, J. : This is an appeal against the judgment of the District Court of Nicosia given in civil action No. 782/62 on the 15th September, 1965.

The undisputed facts which gave rise to the said action are as follows :

Respondent 1, in February, 1961, was a clerical employee of respondent 2, having been appointed as from the 1st January, 1955.

On the 2nd February, 1961, respondent 1 received a letter of transfer from respondent 2 dated the 2nd February, 1961, transferring him to Kakopetria as from the 1st March, 1961.

Respondent 1 by a letter dated the 13th February, 1961, addressed to respondent 2, refused to accept the said transfer.

On the 16th February, 1961, respondent 2 replied to this letter of respondent 1, informing him that unless he complied with his instructions as to the transfer, he was liable to be dismissed.

On the same day, on the 16th February, 1961, respondent 2 wrote to the Public Service Commission informing it of the position and asking it to take disciplinary action against respondent 1 with a view to his dismissal from service.

The Commission wrote to respondent 1 on the 3rd March, 1961, asking him to appear before the Commission to explain the reasons for his refusal to comply with the transfer.

Respondent 1 failed to report for duty on the 1st of March, 1961, at Kakopetria, or at any time thereafter ; and, on the 7th March, 1961, respondent 2 wrote to him suspending him from duty.

On the 8th March, 1961, respondent 1 appeared before the Public Service Commission and was questioned in respect of his refusal to take up duty at Kakopetria on or after the 1st March, 1961. The Commission then considered the matter and decided that the transfer of respondent 1 to Kakopetria was reasonable and that he should take up duties at Kakopetria ; it informed respondent of its decision there and then, whereupon respondent 1 categorically stated to the Commission that he was unable to proceed to Kakopetria.

On the same day, on the 8th March, 1961, the Commission considered the refusal of respondent 1 to proceed to Kakopetria, in accordance with its decision, stated above, and decided that he should be dismissed forthwith.

On the same day, respondent 2 wrote to respondent 1 dismissing him from the service.

On the 24th April, 1961, respondent 1 filed against the Republic, through the Public Service Commission, a recourse in the Supreme Constitutional Court, No. 33/61. The judgment of that Court was delivered on the 29th January, 1962 (see 3 R.S.C.C. p. 30). By virtue of such judgment, the decision of the Commission to transfer respondent 1 was confirmed but the decision of the Commission to dismiss him was annulled as having been taken in a manner incompatible with the principles of natural justice.

On the 31st January, 1962, respondent 2 wrote to respondent 1 stating that he was required to take up duties at Kakopetria as from the 5th January, 1962. He did so.

Respondent 1 as from the 1st March, 1961, to the 5th February, 1962, failed to render any services to respondent 2 at Kakopetria, where he had been transferred; nor did he at any time offer to render any services to respondent 2 at Kakopetria during that period.

On the 20th February, 1962, respondent 1 filed, as plaintiff action 752/62 (D.C. Nicosia) against: (1) The Electricity Authority of Cyprus—respondent 2—, (2) The Public Service Commission, and (3) The Attorney-General of the Republic, as defendants. He claimed damages for the termination of his services, as subsequently annulled by the Supreme Constitutional Court.

By virtue of its judgment under appeal the trial Court dismissed the said action as against the Public Service Commission, as such, and against respondent 2, and gave judgment for £849.778 mils with costs against the appellant under Article 172 of the Constitution; the said amount represents the salary and bonuses that would have been received by respondent 1 during the period he remained out of the service of respondent 2, had his services not been terminated by the Commission, as aforesaid.

It has, first, to be observed that no differentiation could really or properly be made, in a case such as the present one, between the "Public Service Commission" and the Attorney-General, in proceeding against the "Republic".

As they were joined in the action as separate defendants, *the trial Court dismissed the action against the Public Service* Commission because it accepted a submission by counsel for the Republic to the effect that the Commission was not an independent juridical personality and that, therefore, it could not be held liable, as such; as a result, judgment for the wrongful action in question of the Commission was given against the Republic, by being given against the appellant Attorney-General.

But the Public Service Commission is a State organ functioning in the Republic, for the Republic; so, once the essence of the matter is looked at, there can be no doubt that, though the action was dismissed by the trial Court as against

the Public Service Commission, *as a separate defendant*, and judgment was given against the Attorney-General, as representing the Republic, such judgment was, in substance and in fact, given against the Republic in respect of a decision of the Commission which had been declared to be void by the Supreme Constitutional Court under Article 146 and, therefore, the said judgment must be regarded as a judgment given against the Republic, including the Public Service Commission as an organ thereof.

Rightly, therefore, the Attorney-General appearing as the appellant, has argued this appeal also in so far as the position, in the matter, of the Public Service Commission is concerned ; and it was not necessary or proper at all to make formally the Commission a separate party to this appeal.

The first issue which arises for determination in this appeal is whether or not it was open to the trial Court to give judgment, in a case such as the present one, against the Republic on the basis of Article 172 of the Constitution, which reads as follows :

> " The Republic shall be liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic.
>
> A law shall regulate such liability ".

We are in agreement with the learned Attorney-General that once the termination of the services of respondent 1 was a matter within the competence under Article 146 of the Constitution, and, moreover, such termination had been annulled by means of a recourse filed under the said Article, there was no question of proceeding against the Republic at all under Article 172, but the remedy open to respondent 1 was under paragraph 6 of Article 146, which reads as follows:

> " Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a Court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the Court or to be granted such other just and equitable remedy as such court is empowered to grant ".

This view is amply supported by the judgment of the Supreme Constitutional Court in *Kyriakides and The Republic* (1 R.S.C.C. p. 66). It was stated in the said judgment at p. 74 as follows:

> "The Court is of the opinion that no question of parallel legal remedies can arise through the correlation of Articles 146 and 172.
>
> Article 172 lays down the general principle that the Republic is made liable 'for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic'. It is clearly aimed at remedying the situation existing before the coming into force of the Constitution whereby the former Government of the Colony of Cyprus could not be sued in tort.
>
> The principle embodied in Article 172 has been given effect, *inter alia*, in the Constitution by means of paragraph 6 of Article 146 in respect of all matters coming within the scope of such Article 146.
>
> Therefore, in the opinion of this Court, in respect of all wrongful acts or omissions referred to in Article 172 and which acts or omissions come within the scope of Article 146 an action for damages lies in a civil Court only under paragraph 6 of such Article, consequent upon a judgment of this Court under paragraph 4 of the same Article, and in such cases an action does not lie direct in a civil Court by virtue of the provisions of Article 172."

The judgment in *Kyriakides* (*supra*) was confirmed, in the above respect, by the Supreme Constitutional Court in *Loukas and The Republic* (4 R.S.C.C. p. 121 at p. 124).

Should the action in question under Article 146 (6), have been filed against the Republic or against respondent 2 or both?

At the hearing of this appeal, counsel for respondent 1 was not, in the end, inclined to insist that such action could be filed against respondent 2, and he agreed that the Republic was the only proper defendant in the matter.

We do think that this is a correct view. Under paragraph 6 of Article 146, legal proceedings may be instituted, if the claim of a "person aggrieved" by a decision which has been

declared to be void in a recourse under such Article is not met to his satisfaction by "the organ, authority or person concerned". In the light of the whole context of Article 146, and bearing also in mind that in essence paragraph 6 of the said Article is an indemnification provision forming part of the scheme of Article 146, we came to the conclusion that "the organ, authority or person concerned" must mean the organ, authority or person the decision of which has been annulled under Article 146 with the result of giving rise to a claim under paragraph 6 of Article 146.

In the present instance, the termination of the services of respondent was decided upon by the Public Service Commission and it is the decision of the Commission which was declared to be void by the Supreme Constitutional Court. It is such decision which has rendered respondent 1 a "person aggrieved" in the sense of Article 146 (6); it is, therefore, against the Republic that the claim of respondent 1 under paragraph 6 of Article 146 lies.

We would like to point out that we consider as largely irrelevant the law of master and servant in a case such as the present one; we are concerned, here, with the claim of a citizen, respondent 1, for damages because of the consequences of a decision of a public organ - the Public Service Commission--which decision has been declared, on recourse under Article 146, to be void; such claim is not based on the law of master and servant at all, but on his right to make such a claim as provided for by paragraph 6 of Article 146.

Nor is it material, in our opinion, that when the services of respondent 1 were terminated by the Public Service Commission, he was in the employment of the Electricity Authority of Cyprus—respondent 2—or that such termination was recommended by respondent 2 to the Commission. In terminating the services of respondent 1, the Commission was exercising a constitutional function given to it under Article 125 of the Constitution; though such function was being exercised with an employee of respondent 2 as its subject-matter, and though the recommendations of the said respondent were a factor to be duly taken into account, nevertheless, the said function was being exercised as part of the constitutional structure, for the purposes of the State, and on behalf of the Republic, and not of respondent 2; also the ultimate decision lay only with the Commission, because the recommendations of respondent 2 were not binding on it. More-

over, the procedural irregularity which led to the annulment of the decision to terminate the services of respondent 1 was a matter solely due to the course of action adopted by the Public Service Commission, for which respondent 2 cannot be held responsible at all. It is, therefore, the Republic, and the Republic only, which could be sued in these proceedings.

Having held that the claim of respondent 1, under paragraph 6 of Article 146, could only be made against the Republic, there remains to examine to what extent, if any, he is entitled to succeed on such a claim.

There can be no doubt that respondent 1 is a person aggrieved by the decision to terminate his services because, as a result of such decision, he remained out of employment, receiving no salary, for a period from the 8th of March, 1961 until the 5th February, 1962. He was not granted any other restitution by the Republic ; so he is entitled to damages.

We cannot assess such damages on the basis of the measure of damages which would have been adopted had this been a case of wrongful dismissal in the realm of the law of master and servant.

Damages in a case, such as the present one, have to be "just and equitable damages", as laid down in paragraph 6 of Article 146, and, in interpreting such expression, we find great assistance in the course adopted by the French Council of State in the case of Deberles (7th April, 1933). It was held, there, in a case of similar nature to the present one, that in assessing damages in relation to a decision which has been declared to be void the respective importance of the culpability of the Administration and of the claimant must be taken into account.

In the light of the foregoing we are of the view that the amount awarded by the trial Court, in this case, which represented the total loss of respondent 1 while he was out of employment, cannot be regarded as "just and equitable damages" in view of the particular circumstances of this case, as they are to be dealt with further, later on in this judgment.

It has been submitted during the course of the hearing of this appeal that the amount of damages awarded to respondent 1 by the trial Court had been agreed between the parties before the trial Court, and that, in any case, if such agreement is not found to put an end to any dispute regarding the

amount of damages due to respondent 1, then this Court does not have, at present, before it sufficient material to reassess the amount of such damages, and the matter would have to be referred back to the trial Court.

We take the view that the amount awarded by the trial Court had, indeed, been agreed upon between the parties, but it was agreed upon on the mistaken footing that this was the amount to which respondent 1 was entitled on the basis of the measure of damages adopted in cases of wrongful dismissal of a servant by his master, and such amount was awarded under Article 172. We do not consider that there exists in these proceedings any binding agreement regarding the just and equitable damages to which respondent 1 is entitled under paragraph 6 of Article 146.

Moreover, we do think that there is on record sufficient material before us enabling us to proceed to reassess what is due to respondent 1 as just and equitable damages in respect of the wrongful termination of his emloyment by the Public Service Commission in the circumstances of this case.

Taking into account, *inter alia*, that the termination of the services of respondent 1 was decided upon because he unjustifiably refused to obey his transfer to Kakopetria, and taking into account that such transfer was found to be valid by the Supreme Constitutional Court, and that the termination of the services of respondent 1 was found to be invalid only because the proper procedure was not followed for the purpose, we take the view that this is a case where the culpability of respondent 1 in the matter is much greater than the culpability of the Republic, through the Public Service Commission.

Bearing in mind the above and also what would have been ordinarily due to respondent 1 had this been a simple case of wrongful dismissal would have been £849.678 mils, as agreed between the parties before the trial Court, we take the view that in the unusual circumstances of this case an amount of £300 represents what are just and equitable damages, payable under paragraph 6 of Article 146, to respondent 1 in this case.

In the result, therefore, this appeal is allowed to the extent to which it relates to judgment having been given against the Republic under Article 172 and, instead, judgment is given against the Republic—the appellant—under Article 146(6) for £300.

Regarding costs, we think that the proper order should be that the Republic should bear half the costs of respondent 1 in the Court below and here and that there should be no order as to costs in respect of the costs of respondent 2 in the Court below or here.

Appeal allowed. Order as to costs as aforesaid.