

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VINCENT POUTROS,

Applicant,

and

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

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(Case No. 78/68).

Public Corporation—Officers of Public Corporations—Cyprus Telecommunications Authority (CYTA)—Dismissal of the Applicant an officer of the Respondent said Authority, on disciplinary grounds, decided upon by the Board of the Respondent on January 24, 1968, viz. after the promulgation in June, 1967 of the Public Service Law, 1967 (Law No. 33 of 1967)—Dismissal annulled, as effected in an invalid manner and without competence, there being at the material time no legislation enabling the Respondent Authority to take such action—Dismissal complained of not warranted by the doctrine of necessity—Section 10(1) and (2) (as amended by section 4 of Law No. 25 of 1963) and section 28(3) of the Telecommunications Service Law, Cap. 302 inapplicable to the present case—The case of Iosif and The Cyprus Telecommunications Authority, reported in this Part at p. 225, ante, followed.

Constitutional Law—Necessity—Doctrine of necessity—Matters of personnel of various Public Corporations—Considerations enabling valid resort to the aforesaid doctrine, not present in the instant case—See also supra.

Necessity—Doctrine of—See supra.

Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law No. 61 of 1970), section 4—Does not have the effect of rendering valid retrospectively the sub judice dismissal of the Applicant in relation to which dismissal judgment had already been reserved at the time of the promulgation of said Law.

Retrospective legislation—Validation of administrative decision retrospectively—Effect on decisions already challenged by means of the recourse under Article 146 of the Constitution—See supra.

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Recourse under Article 146 of the Constitution—Ex post facto validation of administrative decisions—Effect of such legislation on administrative decisions already forming the subject-matter of a recourse and in relation to which judgment of this Court had already been reserved—Such decisions unaffected—See also supra.

Words and Phrases—“Administrative control” (“Διοικητικός Έλεγχος”) in section 10(2) of the Telecommunications Service Law, Cap. 302, as amended by section 4 of the Telecommunications Service (Amendment) Law, 1963 (Law No. 25 of 1963).

Public Service Commission—Set up and functioning under Articles 122 to 125 of the Constitution—Ceased to exist on the promulgation of the Public Service Law, 1967 (Law No. 33 of 1967)—Public Service Commission set up under said Law No. 33 of 1967—Not empowered to deal with matters concerning members of the staff of a public corporation such as the Respondent.

In this case the Applicant complains against his dismissal from the service of the Respondent Cyprus Telecommunications Authority (CYTA) on disciplinary grounds. The main argument put forward by the Applicant in support of the present recourse was that there was no competence vested in the Respondent to deal with, and decide upon, the matter. The relevant decision was taken by the Board of the Respondent Authority on January 24, 1968, viz. about seven months after the enactment in June, 1967 of the Public Service Law, 1967 (Law No. 33 of 1967). Until then, the organ vested with the disciplinary control or power over the personnel of the Respondent Authority was undoubtedly the Public Service Commission established under Article 124 of the Constitution (see Article 125 read together with Articles 122 and 124 of the Constitution). On the other hand, in *Bagdassarian's* case (*infra*) it was held that: (a) Upon the promulgation in June, 1967 of the aforesaid Public Service Law, 1967, there ceased to exist a Public Service Commission competent, under Article 125 of the Constitution (*supra*), to exercise any powers in relation to such matters as aforesaid; and (b) the Public Service Commission set up and functioning under the aforementioned Public Service Law, 1967 (Law No. 33 of 1967) was not an organ empowered, at the material time, to deal with matters concerning members of the staff of a Public Corporation such as the Respondent Authority (see *Bagdassarian and The Electricity Authority of Cyprus* (1968) 3 C.L.R. 736).

That was the position when the decision complained of in the present case was taken on January 24, 1968, by the Respondent Authority. Apparently, it was taken for granted that once the Public Service Commission set up under Law No. 33 of 1967 (*supra*) did not possess any relevant competence in relation to the personnel of the Respondent, then such competence had, *ipso facto*, vested in the Respondent. Such view was held by the Court to be erroneous (*infra*). Be that as it may, the Respondent relying on sections 10 and/or 28 of the Telecommunications Service Law, Cap. 302, as amended by section 4 of the Telecommunications Service (Amendment) Law, 1963 (Law No. 25 of 1963) (see *infra*) and, alternatively, on the doctrine of necessity, submitted that they were entitled, through their Board, to act as they have done in relation to the disciplinary charges against the Applicant in the instant case. It is to be noted that pending delivery of the judgment in this case a Law was promulgated whereby matters were put right; this is the Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law No. 61/70). But this Court held that the said Law does not affect the outcome of the case, because such Law, particularly its section 4, does not, and could not, have the effect of rendering valid retrospectively the decision complained of, once the judgment of this Court had already been reserved in relation thereto (*infra*).

Annulling the Applicant's dismissal from the service of the Respondent Authority, the Court:-

Held, (1). For reasons analogous to those stated recently in a similar case (*Iosif and The Cyprus Telecommunications Authority*, reported in this Part at p. 225 *ante*) I am of the view that the Respondent was not entitled, under section 10 of the Telecommunications Service Law, Cap. 302, as amended by section 4 of the Telecommunications Service (Amendment) Law, 1963 (Law No. 25 of 1963), to deal with the said charges against the Applicant and decide thereon, as it did. Section 10(2) (as amended) of Cap. 302 provides: "The officers and servants of the Authority shall be under the administrative control of the Authority" (*viz.* the Cyprus Telecommunications Authority, the Respondent in the present case). In my opinion, the notion of "administrative control" ("Διοικητικὸς ἔλεγχος") in sub-section (2) can only be construed, in the context of the whole section 10, as meaning control regarding internal administrative functions and does not include the power to terminate the appointment of an officer of the Respondent.

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(2) There is a further reason for which it cannot be held that sub-section (2) of section 10 as and when enacted was intended to confer on the Respondent such a power (*supra*). Indeed, it cannot be said that on May 16, 1963, when the aforesaid Law No. 25 of 1963 was promulgated (*supra*) it was intended to include within the ambit of the re-enacted new sub-section (2) the power to dismiss for disciplinary reasons an officer of the Respondent, because on the said date, there was in existence and functioning a Public Service Commission exercising exclusively under Article 125 of the Constitution, such disciplinary power.

(3) (a) Section 28 of the statute (Cap. 302, *supra*) does not carry the case for the Respondent any further. That section is a transitional provision and it relates to those of the officers of the Respondent Authority, such as the Applicant, who were previously in the employment of the Cable and Wireless Ltd. and became officers of the Respondent when the latter took over under section 24 of the same Law Cap. 302, the undertaking of the former.

(b) As a matter of fact sub-section (3) of section 28 of Cap. 302 provides: "Nothing in this section shall be deemed to affect the right of the Authority to terminate the employment of any such employee transferred to the service of the Authority (*viz.* the Respondent), or to vary his rate of pay or conditions of service, in the manner and to the extent that the company could have done had he continued to be in the service of the company".

It is, in my view, quite obvious that a provision of this nature, when read together with section 10 (*supra*), can only operate as to ensure that the employment of the officers concerned can be terminated on the same basis as when they were in the service of Cable and Wireless Ltd. and that it was not intended thereby to confer on the Respondent Authority any special competence in relation to the particular class of officers within the ambit of section 28, which the Respondent did not otherwise possess in respect of all its other officers.

(c) Moreover, as from August 16, 1960 when the Constitution came into force, even if—contrary to my already stated view—there did exist a special competence under section 28(3) of Cap. 302, such competence could no longer be exercised, because of the provisions of Articles 122 to 125 of the

Constitution (see in this respect the case-law referred to in the *Bagdassarian* case, *supra*).

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(4) There remains to be considered, next, the question as to whether or not, once the Public Service Commission envisaged under Article 125 of the Constitution ceased to exist (*supra*), the doctrine of necessity entitled the Respondent, through its Board, to act as it has done in relation to the disciplinary charges against the Applicant.

The relevant principles and case law have been referred to in the *Iosif*-case (*supra*), and I need not repeat them herein. Bearing them in mind and on the basis of the material before me, I have come to the conclusion that a proper application of the doctrine of necessity could not have, at all, warranted the exercise of competence by the Respondent to the extent of conducting a final hearing regarding the disciplinary charges, against the Applicant and deciding to dismiss him finally from its service on the ground that he had been found guilty in respect thereof.

(5) As in the *Iosif* case (*supra*), in the present case, too, it is quite clear that the Board of the Respondent, embarked upon the course of action which has led to the *sub judice* decision, without having considered at all whether or not there had arisen a proper occasion for resorting to the doctrine of necessity, and, if so, to what extent. What really happened is merely this: It was taken for granted that once the Public Service Commission set up under the Public Service Law, 1967 (Law No. 33 of 1967) did not possess any relevant competence in relation, *inter aliā*, to the personnel of the Respondent (*supra*), then such competence had, *ipso facto*, vested in the Respondent! But such a view was indeed, an erroneous one, and this error is quite eloquently indicated in the preamble to the Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law No. 61 of 1970).

(6) In connection with this last mentioned Law No. 61 of 1970 it might be stated that in the present case, also, I am of opinion, as I was in the *Iosif* case, *supra*, that section 4 thereof does not, and could not have the effect of rendering valid retrospectively the decision to dismiss the Applicant after, in relation to such decision the judgment of this Court in the instant case had already been reserved.

(7) On the basis of the foregoing considerations the result is that the Respondent has acted in an invalid manner, in particular without competence, when it adopted at the material time, the course which led to, and included, the decision to dismiss the Applicant; consequently his dismissal has to be declared *null and void* and of no effect whatsoever.

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

Cases referred to:

Bagdassarian and The Electricity Authority of Cyprus (1968)
3 C.L.R. 736;

Iosif and The Cyprus Telecommunications Authority, reported
in this Part at p. 225 *ante*.

Recourse.

Recourse against the decision of the Respondent to dismiss Applicant from the service of the Cyprus Telecommunications Authority.

L. Papaphilippou, for the Applicant.

A. Hadjiioannou, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLIDIS, J.: In this case the Applicant complains against his dismissal, from the service of the Respondent, on disciplinary grounds.

The relevant decision of the Respondent is dated the 24th January, 1968, and it was communicated to the Applicant on the 5th February, 1968 (see *exhibit 7*).

An interim decision given by me in a related case—with which the present case was heard together on common issues—has been adopted, *mutatis mutandis*, as an interim decision for the purposes of this case, too. By such decision (see *Bagdassarian and The Electricity Authority of Cyprus* (1968) 3 C.L.R. 736) it was held that the Public Service Commission set up and functioning under the Public Service Law, 1967 (Law 33/67) was not an organ empowered, at the material

time, to deal with matters concerning members of the staff of a public corporation such as the present Respondent; and it was, also, held that upon the promulgation of Law 33/67, there ceased to exist a Public Service Commission competent, under Article 125 of the Constitution, to exercise any powers in relation to such matters.

Then, the present case was heard, further, on the other issues arising herein, including the issue as to whether or not the Respondent, acting through its Board, was competent, at the material time, to deal with the disciplinary charges against the Applicant and to decide, on the basis thereof, to dismiss him.

For reasons analogous to those stated recently in my judgment in a similar case (*Iosif and Cyprus Telecommunications Authority* (reported in this Part at p. 225 *ante*) I am of the view that the Respondent was not entitled, under section 10 of the Telecommunications Service Law (Cap. 302) as amended by means of section 4 of the Telecommunications Service (Amendment) Law, 1963 (Law 25/63), to deal with the said charges and to decide thereon, as it did. In the *Iosif* case (*supra*) I examined, in particular, the effect of sub-section (1) of section 10, which relates to appointments only; so, for the purposes of the present case, I have not lost sight of sub-section (2) of section 10 which provides that "The officers and servants of the Authority shall be under the administrative control of the Authority". In my opinion, the notion of administrative control (διοικητικός έλεγχος), in sub-section (2), can only be construed, in the context of the whole section 10, as meaning control regarding internal administrative functions and does not include the power to terminate the appointment of an officer of the Respondent. There is a further reason for which it cannot be held that sub-section (2), as and when enacted, was intended to confer on the Respondent such a power: Sub-section (2) was enacted as part of a new section 10 which was substituted in the place of the old section 10, of Cap. 302, by means of section 4 of Law 25/63; a sub-section (2) in virtually identical form was to be found in the old section 10, too; but, irrespective of the effect of the old sub-section (2), it cannot be said that it was intended, on the 16th May, 1963, when Law 25/63 was promulgated, to include within the ambit of the re-enacted new sub-section (2) the power to dismiss for disciplinary reasons an officer of the

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Respondent, because on the said date, there was in existence and functioning a Public Service Commission, exercising, exclusively, under Article 125 of the Constitution, such power.

It was submitted, by counsel for the Respondent, that the Respondent was, in any case, empowered to dismiss the present Applicant in view of the provisions of section 28 of Cap. 302. Such section is a transitional provision and it relates to those of the officers of the Respondent Authority, such as the Applicant, who were previously in the employment of Cable and Wireless Ltd. and became officers of the Respondent when it took over the undertaking of Cable and Wireless Ltd. under section 24 of Cap. 302.

As a matter of fact sub-section (3) of section 28 of Cap. 302 provides that “Nothing in this section shall be deemed to affect the right of the Authority to terminate the employment of any such employee transferred to the service of the Authority, or to vary his rate of pay or conditions of service, in the manner and to the extent that the company could have done had he continued to be in the service of the company”. It is, in my view, quite obvious that a provision of this nature, when read together with section 10, can only operate as to ensure that the employment of the officers concerned can be terminated on the same basis as when they were in the service of Cable and Wireless Ltd. and that it was not intended thereby to confer on the Respondent any special competence, in relation to the particular class of officers within the ambit of section 28, which the Respondent did not otherwise possess in respect of all its other officers.

Moreover, as from the 16th August, 1960, when the Constitution came into force, even if—contrary to my already stated view—there did exist a special competence under section 28(3) of Cap. 302, such competence could no longer be exercised, because of the provisions of Articles 122—125 of the Constitution (see in this respect the case—law referred to in the *Bagdassarian* case, *supra*).

There remains to be considered, next, the question as to whether or not, once the Public Service Commission envisaged under Article 125 ceased to exist, the doctrine of necessity entitled the Respondent, through its Board, to act as it has done in relation to the disciplinary charges against the Applicant (either by acting under section 28(3) of Cap. 302,

on the assumption—a wrong one, in my view—that such section conferred on the Respondent a particular competence, or even independently of it, for the sake of the proper functioning of the services of the Respondent, in the interests of the Respondent and in the public interest):

The relevant principles and case-law have been referred to in the *Iosif* case, and I need not repeat them herein. Bearing them in mind, and on the basis of the material before me in this case, I have come to the conclusion that a proper application of the doctrine of necessity could not have, at all, warranted the exercise of competence by the Respondent to the extent of conducting a final hearing regarding the disciplinary charges against the Applicant and deciding to dismiss him finally from its service on the ground that he had been found guilty in respect thereof. I might be inclined to agree (if I had to decide on this aspect, which is not before me in this case, and, therefore, I express no final view in relation thereto) that, as the said charges alleged misconduct in the course of espionage activities by the Applicant, there was room for the Respondent to exercise competence, under the doctrine of necessity, with a view to deciding to keep the Applicant, under such terms as might be deemed proper, away from his employment, pending the future determination of his guilt or innocence, in relation to such charges, by a competent organ. Such a temporary measure would have sufficed to protect not only the Respondent's interests but, also, the public interest.

It might have been desirable for the Applicant to have the disciplinary charges against him dealt with as expeditiously as possible, so as not to be kept in uncertainty about his future; and, also, it might have been desirable that, if found guilty of such charges, he should be punished therefor as early as possible, because his prompt punishment would have a greater deterrent effect on the other employees of the Respondent than keeping him away from work indefinitely, pending his eventual disciplinary trial by a competent, for the purpose, organ; but these considerations could certainly not be treated as being so imperative as to amount to exceptional circumstances enabling valid resort to the doctrine of necessity for the purpose of dealing, as it was done, with the matter of the said charges.

As in the *Iosif* case, in the present case, too, it is quite clear

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that the Board of the Respondent, embarked upon the course of action which has led to the *sub judice* decision, without having considered whether or not there had arisen a proper occasion for resorting to the doctrine of necessity, and, if so, to what extent. It was taken for granted that once the Public Service Commission which was set up under Law 33/67 did not possess any relevant competence in relation to the personnel of the Respondent, then such competence had, *ipso facto*, vested in the Respondent. Such a view was, indeed, an erroneous one, and this error is quite eloquently indicated by the preamble to the Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law 61/70); and, in connection with such Law, it might be stated that in the present case, also, I am of the opinion, as I was in the *Iosif* case, that section 4 thereof does not, and could not, have the effect of rendering valid retrospectively the decision to dismiss the Applicant after, in relation to such decision, the judgment of this Court had already been reserved.

On the basis of all the foregoing considerations the result is that the Respondent acted in an invalid manner, in particular without competence, when it adopted, at the material time, the course which led to, and included, the decision to dismiss the Applicant; therefore, his dismissal has to be declared to be *null* and *void* and of no effect whatsoever.

In the circumstances it is not necessary to decide any of the other issues raised in this case, and actually, I should not do so, because, in view of the possibility of a new disciplinary trial of the Applicant, I should say nothing which might prejudice the outcome of such trial.

Bearing in mind all relevant factors I am not prepared to make any order as to costs.

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