1980 May 10

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

OLYMBIA CONSTANTINOU,

Applicant,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

(*Case No.* 424/78).

Cyprus Telecommunications Authority—Disciplinary offences by officers of—Dealt with under Internal Rules of the Authority—Validity of such Rules—Whether they have to be approved by the Council of Ministers—Sections 9, 10 *and* 43 *of the Inland Telecommunications Service Law, Cap.* 302*—New General Staff Regulation of the Authority—Whether of retrospective effect—Regulation* 54 *thereof.*

Statutes—Retrospective operation—Principles applicable—Statutes relating to procedure and evidence to be construed as retrospective unless there is a clear indication that that was not the intention of the legislature—Section 10(2)(*e*) *of the Interpretation Law, Cap.* 1*—New General Staff Regulation of the Cyprus Telecommunications Authority—Whether of retrospective effect—Regulation* 54 *thereof.*

The applicant, an employee of the respondent Authority, was found guilty by the General Manager of the Authority of three disciplinary offences and was dismissed from the service of the Authority. The disciplinary offences were committed between July 11 to July, 21 1977, the trial before the General Manager took place on October 24, 1977 and his decision was pronounced on November 10, 1977. The applicant appealed against the decision of the General Manager to the Board of the respondent Authority which decided to remit the case to the General Manager for rehearing. The General Manager reheard the

case on March 20, 1978 and decided not to change the sentence which he had originally imposed. The applicant appealed again to the Board of the respondent Authority which, by its *decision given on September 23, 1978, confirmed the decision* of the General Manager and hence this recourse. 5

The proceedings both before the General Manager and the Board were conducted in accordance with the procedure envisaged by section E of the Internal Rules of the respondent Authority ("The Old Rules"), which were substituted on July 27, 1977 by new Rules, called the "New General Staff Regulation" ("the new Rules"). 10

Counsel for the applicant mainly contended:

(a) That neither the old Rules nor the new Rules, whichever was applicable in the case in hand, are valid in law because they were not approved by the Council of Ministers in accordance with section 43* of the Inland Telecommunications Service Law, Cap. 302; 15

(b) That the case of the applicant was governed by the new Rules and not the old Rules.

It was argued in this connection that until the decision of the General Manager was delivered on November 10, 1977 the old Rules were in force, but for all procedural steps taken thereafter, namely the rehearing of the case and the appeals from the decisions of the General Manager, which all took place in 1978, the new Rules were applicable. 20 25

Regulation 54 of the new Rules reads as follows:

"'Εκκρεμῆ πειθαρχικὰ ἀδικήματα τελεσθέντα πρὸ τῆς δημοσιεύσεως τοῦ παρόντος Κανονισμοῦ δι' ἃ δὲν ἠσκήθη πειθαρχικὴ δίωξις, ἐκδικάζονται ἐπὶ τῇ βάσει τῶν κατὰ τὸν χρόνον τῆς τελέσεως αὐτῶν ἰσχυουσῶν διατάξεων". 30

("Pending disciplinary offences committed before the publication of the present Regulation for which disciplinary prosecution was not exercised, are tried on the basis of the provisions in force at the time of their commission").

Held, (1) that the Rules in question are internal Rules govern- 35

* Quoted at pp. 251-52 *post*.

ing matters relating to the terms of employment of the personnel of the respondent Authority, including the procedure to be observed regarding disciplinary proceedings, which as of their nature did not have to be approved by the Council of Ministers and published in the Gazette as provided, with regard to other Regulations, by section 43 of Cap. 302; that the respondent Authority may make standing orders regulating its own procedure generally (see section 9 of Cap. 302); that, therefore, these Internal Rules must be considered as the administrative directions and standing orders of the respondent Authority given from time to time to the General Manager for the better implementation of its policy and the day to day administration which inevitably implies the disciplinary control of its employees; and that, accordingly, contention (a) must fail (see, also, section 10 of Cap. 302).

(2) That statutes relating to procedure and evidence are to be construed as retrospective unless there is a clear indication that that was not the intention of the legislature (see Halsbury's Laws of England, third ed. vol. 35, para. 647 and section 10(2)(e) of the Interpretation Law, Cap. 1); that the words "δὲν ἠσκή-θη πειθαρχικὴ δίωξις" in regulation 54 of the new Rules, which have been translated as "disciplinary prosecution was not exercised", can only be understood as meaning "was not exercised and completed", as that is the effect of the past tense in which the verb "ἠσκήθη" ("was exercised") has, as the past tense of a verb, generally speaking, denotes an act which commenced and was completed in the past and not an act which commenced and continues to take place; that, therefore, the respondent Authority rightly approached the Law on the subject and found that the Internal Rules governing the present case were the old ones; and that, accordingly, contention (b) must, also, fail.

Application dismissed.

Cases referred to:

Cleanthous v. *Cyprus Telecommunications Authority* (1974) 3 C.L.R. 461.

Recourse.

Recourse against the decision of the respondent Cyprus Telecommunications Authority confirming the decision of the

General Manager of the Authority whereby applicant was found guilty of three disciplinary offences and was dismissed from the service.

L.N. Clerides, for the applicant.

A. Hadjioannou, for the respondent. 5

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recoursè the applicant seeks, "A declaration of the Court that the act and or decision of the respondent Authority dated 23rd September, 1978 confirming the decision of the General Manager 10 of the Authority, dated 30th March, 1978, by which the applicant was found guilty on three disciplinary offences and whereby it was imposed on her the punishment of dismissal from the service, be declared null and of no effect whatsoever."

The applicant entered the service of the respondent Authority 15 on the 23rd March, 1964 as a temporary telephone operator and made permanent on the 9th April, 1969, "subject to the regulations and the terms of service of the Authority in force from time to time" (*exhibit* 1).

On the 29th April, 1977, she applied and was given leave of 20 absence abroad from the 30th April, 1977 to the 10th May, 1977. During her absence she applied for extension of that leave until the 18th May, which was granted. On the 1st July, she applied again and was given leave of absence abroad from the 2nd to the 9th July, when normally she would resume work 25 on Monday the 11th July.

On the 8th July she asked through the phone for extension of her leave which was refused. She made further efforts for extension of her leave which might be set off as against her leave that she would be entitled in the year 1978 or to be consi- 30 dered as leave without remuneration which was again turned down. She communicated with Mr. Markides, but it was made clear to her that for the interest of the service she had to return and if she had any problem in securing a place on the aircraft, a delay of a day or two on account of that would be arranged. 35 When she then said that she might stay away for reasons of health, it was pointed out to her that in such a case the relevant regulations regarding sick-leave should be complied with.

On the 15th July she sent a cable by which she sought approval

for her further stay in Athens in order to receive medical treatment. She gave therein a telephone number through which she could be reached. The efforts made in that respect were unsuccessful as she was not available at that telephone, the reply given 5 was that she was not living in that house at the time. Eventually she returned on the 22nd July, but she was told by Mr. Markides, the Personnel Manager, not to resume work but call at his office on the 23rd. When she was asked for the reasons of her absence from work without leave she alleged illness. She produced a 10 medical certificate from a certain Georghios Makri to the effect that he had treated her from the 5th to the 22nd July at the house of a certain Ioannis Tzoulakis. That is the house where there was the telephone given by her in her cable.

On the 12th September, 1978, a Board of Investigation was 15 set up by the General Manager, under the provisions of section "E"—Offences and Punishments—of the Internal Rules of the respondent Authority, which consisted of Mr. Markides, the Personnel Manager and two other senior officers, namely Messrs. Modestou and G. Papaioannou, in order to enquire into 20 the offence of unjustified absence from work and/or absence from work by falsely invoking illness. The conclusions of this Board as they appear in the relevant minutes of its proceedings *exhibit* "*E*" were that the following serious, in the view of the Board, offences were committed by her, namely (a) unjustified 25 absence from work and/or absence from work by falsely invoking illness; (b) an attempt to deceive the service by false declarations and/or certificates; and (c) for persisting in untruthful explanations.

These conclusions were submitted to the General Manager 30 of the respondent Authority on the 5th October, 1977 and on their basis the General Manager proceeded to hear the case against the applicant on the 24th October, 1977. The relevant records have been produced as *exhibit* "*A*". The decision of the General Manager was delivered on the 10th November, 35 1977, *exhibit* "*A*. 1". Its concluding paragraph reads as follows: "For all these and as I am convinced that (a) the employee was absent from work without justification; (b) these allegations put forward in justification of her absence are defeated by the facts; (c) she insisted before the Board of Investigation 40 on allegations which were proved as untrue and (d) her absence from work is not related to illness of either herself or of her

children, (see grounds for travelling abroad) and as her whole conduct constitutes conduct unbecoming to the service status, I consider that the charges preferred against her were proved fully and I impose on her the sentence of definite dismissal from the service of the Authority. 5

The amounts in the Provident Fund/Pension Fund/standing to her credit to be paid to her in full. Her remuneration during the period of interdiction to remain half."

On the 4th February, 1978, the applicant appealed against this decision of the General Manager to the Board of the 10 respondent Authority. She was represented by counsel who clearly stated that there was no intention to question the correctness of the facts as found by the General Manager, nor were they disputing the verdict of guilt with regard to the three disciplinary offences, but only that the punishment imposed on the 15 applicant was severe, in view of mitigating factors relating to her psychological condition resulting from family problems, namely her desertion by her husband. He pointed out the long service of the appellant, her past record and stressed her repentance for her conduct, both in connection with the commission of the 20 offences for which she was found guilty, as well as her subsequent conduct. The Board of the respondent Authority gave its decision on the 25th February, 1978, (*exhibit* "*B.* 1") in which after a reference is made to what was said by her then counsel on her behalf, it is stated: 25

> "...... The Board observes that the appellant admitted before it the charges which she denied at the hearing of the case before the General Manager. She also expressed repentance for the disciplinary offences committed by her and she asked the leniency of the Board on account of 30 special reasons, that is:
>
> (a) That she was abandoned by her husband without any financial support from him, to her and her infant children.
>
> (b) Expresses her sorrow and repentance for all she 35 committed in breach of the regulations and her employment status.
>
> The Board having ascertained that the aforesaid facts were for the first time placed by the appellant before it and that

at no time they were placed before the General Manager at the first instance trial, decides and remits the case to the General Manager for the purpose of rehearing the case in the light of the new facts and the taking of a decision 5 by him."

On the 20th March, 1978, the case was reheard by the General Manager. From the relevant minutes (*exhibit "C"*) it appears that the applicant was represented by the same counsel and through him she admitted that she had made a mistake under 10 the pressure of family problems as explained to the Board of the respondent Authority during the appeal, and that in no way the correctness of the conviction was questioned. The applicant was then asked if she wanted to add anything to what her counsel had said and she said. "I apologize, I admit that I made a 15 mistake and I promise that if I am re-employed I shall try to work for the Authority satisfactorily."

In the decision of the General Manager, dated 30th March, 1978, (*exhibit "C 1"*), reference is made to the three disciplinary offences for which the applicant was tried and found guilty, to 20 her appeal and remittance for re-examination of the disciplinary punishment imposed and concludes as follows:

"The Court having examined with due attention the new grounds put forward in mitigation of the sentence imposed and having weighed all prons and cons in conjunction with 25 the nature of the disciplinary offences committed by the applicant, finds that on account of their seriousness it was not justified to change the sentence imposed and decided to leave it as it was."

From this decision the applicant appealed once more to the 30 Board of the respondent Authority which heard her appeal on the 6th June, 1978, the relevant record of which has been produced as *exhibit "D"*. She was represented this time by her present counsel. The appeal, as stated in the letter of her counsel, dated 4th April, 1978, *exhibit "D"* page 5, was against 35 the sentence imposed. At the hearing of her appeal her counsel raised the point that the procedure followed by the General Manager at her trial was contrary to the General Staff Regulations of the respondent Authority and void ab initio. He also addressed the Board of the respondent Authority on the question

of the sentence and the relevant mitigating factors which, he submitted were ignored by the General Manager.

The decision of the Board was given on the 23rd September, 1978 (*exhibit* "*D.* 1")

Although the Board felt that the legal objections raised were not covered by the grounds of appeal, yet it considered and ruled upon them. Briefly, it considered that under rule 54(1) of the new Rules, *exhibit* "*G*", the Rules of procedure applicable to the case of the applicant were the old Rules and not the new ones as urged by her counsel. After it referred to the history of events it concluded as follows:

> "13. On the substance of the appeal, that is, the mitigation of sentence, the Board having taken into consideration what was placed before it at the hearing of the appeal and what was set out before the General Manager, as well as the addresses of the counsel of the appellant in both instances, points out that it finds no reason to interfere with the decision of the General Manager, except in what it relates to the time of the dismissal of the appellant which it decides and fixes as from the 31st March, 1978."

The procedure with regard to the investigation and trial of disciplinary offences is set out in the Internal Rules of the respondent Authority, *exhibit* "*F*". These Rules were in force since before Independence and were found in the case of *Cleopatra Cleanthous and The Cyprus Telecommunication Authority*, (1974) 3 C.L.R. p. 461 to have continued to be in force after the enactment of the Public Authorities (Regulation of Personnel Matters) Law, 1970, (Law No. 61 of 1970). Triantafyllides, P., in that case after reproducing section 3 of the aforesaid Law had this to say at p. 469.

> "Therefore, in my opinion, even after the enactment of Law 61/70 the Rules, of which section E–quoted above–forms a part, continued to be in force; and in view of the express provisions of rule 5, I have reached the conclusion that the Board of the respondent was not competent to deal with the issue of the guilt or innocence of the applicant regarding the disciplinary charges against her and, therefore, the decision challenged by this recourse has to be declared to be null and void and of no effect whatsoever, because of

lack of competence of the organ which took it, namely the Board of the respondent.

The above view of mine is strengthened by the provision in rule 6 about the right of appeal, which undoubtedly means that there is a right of appeal to the Board after a decision has been reached by the General Manager of the respondent;"

Following the decision in the *Cleanthous case* (*supra*) these Internal Rules were amended by the respondent Authority on the 12th December, 1975. This amendment expressly conferred upon the General Manager competence to try and impose the appropriate punishment in disciplinary offences acting as a tribunal of first instance and provided further that the Board could entertain such cases as an appellate tribunal if the officer affected wished to challenge the decision of the General Manager.

After negotiations with the employees' trade unions the respondent Authority prepared and approved on the 27th July, 1977, new rules in substitution of the old ones, called the New General Staff Regulation (*exhibit* "*G*"), which came into force by a circular of the respondent Authority addressed to its employees by the General Manager in accordance with article 57 thereof.

There exist, between the two sets of rules, certain material differences which have given rise to the grounds of Law raised by this recourse. But before I deal with these differences I find it convenient to examine the first ground of Law argued on behalf of the applicant, namely that none of these two sets of rules, whichever set was applicable in the case in hand are valid in Law inasmuch as neither was issued in accordance with section 43 of the Inland Telecommunications Service Law, Cap. 302 which reads as follows:

"43. The Authority may, with the approval of the Council of Ministers, make Regulations not inconsistent with the provisions of this Law, or any other Law in force for the time being, to be published in the Gazette, for the better carrying of this Law into effect and, without prejudice to the generality of the power hereby conferred, Regulations may be made in respect of all or any of the following matters:-

(a) to prescribe the rate of charges to be made in respect of telecommunications services, telecommunication equipment sold or hired, and the fees payable in respect of the inspection, testing, maintenance of subscriber's installations and of any other services properly rendered on account of the subscriber;

(b) to prescribe the form of applications for any telecommunications service, the manner of effecting such service, the terms and conditions under which such service shall operate and the incidence of the charges in respect of the cost of connecting the subscriber's premises with any telecommunications exchange;

(c) to prescribe the methods to be adopted for the operation of telecommunications services, the security to be furnished by subscribers, and the conditions for the discontinuance of a telecommunications service in any case where a subscriber fails to observe the requirements of this Law or of any Regulations made thereunder or is in arrears with his payments of any proper charges and also in other cases where such discontinuance may be deemed necessary or advisable;

(d) to perform all acts necessary for the proper management of the telecommunications service."

It is not in dispute that neither set of rules were ever approved by the Council of Ministers or published in the Gazette of the Republic.

It was argued that these Internal Rules come under paragraph (d) of section 43 hereinabove set out as being regulations for the purpose of performing "all acts necessary for the proper management of the telecommunication service". On the other hand counsel for the respondent Authority has argued that section 43 covers the case of regulations and not of rules which are two different matters and therefore same does not apply to both sets of Internal Rules, *exhibits* "*F*" and "*G*" with which we are not concerned in this case.

In my view the short answer is that the rules in question are internal Rules governing matters relating to the terms of employment of the personnel of the Authority, including of course the

procedure to be observed regarding disciplinary proceedings, which as of their nature did not have to be approved by the Council of Ministers and published in the Gazette as provided with regard to other regulations by section 43 of the Law. It
5 is worth noting that under regulation 57 of the New General Staff Regulation (*exhibit* "*G*"), its amendment is effected upon the proposal of the Authority or the personnel, represented by its trade union, which is recognized by the Authority as a unified professional organization of the staff. This shows that these
10 rules are matters of labour relations and as such internal matters of the authority relating to its power to appoint and exercise administrative control over its employees.

Section 10 of the Law as amended by section 4 of Law 25 of 1963 reads as follows:

15 "10.-(1) Δέον ὅπως διορισθῶσιν εἷς Γενικὸς Διευθυντής, εἷς Γραμματεὺς καὶ οἱ ἀναγκαῖοι διὰ τοὺς σκοποὺς τοῦ παρόντος Νόμου λοιποὶ ἀξιωματοῦχοι καὶ ὑπάλληλοι.

(2) Οἱ ἀξιωματοῦχοι καὶ οἱ ὑπάλληλοι τῆς 'Αρχῆς ὑπόκεινται εἰς τὸν διοικητικὸν ἔλεγχον αὐτῆς.

20 (3) 'Ο Γενικὸς Διευθυντὴς εἶναι τὸ ἀνώτατον ἐκτελεστικὸν ὄργανον τῆς 'Αρχῆς, θὰ εἶναι δὲ ὑπεύθυνος διὰ τὴν ἐφαρμογὴν τῆς πολιτικῆς τῆς 'Αρχῆς, καὶ τὴν διαχείρισιν τῶν καθ' ἡμέραν δραστηριοτήτων αὐτῆς ὑποκείμενος εἰς τὰς ἑκάστοτε ἐκδιδομένας πρὸς αὐτὸν ὁδηγίας τῆς 'Αρχῆς".

25 ("10.—(1) There shall be appointed a General Manager, a Secretary and such other officers and servants of the Authority as may be necessary for the purposes of this Law.

(2) The officers and servants of the Authority shall be under the administrative control of the Authority.

30 (3) The General Manager shall be the chief executive officer of the Authority and shall be responsible for the execution of the policy of the Authority and the administration of its day-to-day business subject to such directions as may from time to time be given to him by the Authority.")

35 The Authority has the administrative control of its officers and its General Manager is its highest executive organ and the person responsible for the implementation of its policy and the administration of the daily activities, subject to the directions

given from time to time by the Authority. Furthermore under section 9 of the Law and subject to its provisions, the respondent Authority "may make standing orders regulating its own procedure generally ......".

These Internal Rules therefore must be considered as the administrative directions and standing orders of the respondent Authority given from time to time to the General Manager for the better implementation of its policy and the day to day administration which inevitably implies the disciplinary control of its imployees. Therefore this ground of Law cannot succeed.

The next ground argued on behalf of the applicant is that irrespective of the outcome of the first ground the amendment on the 10th December, 1975 of rule 5 of the Internal Rules (*exhibit* "*F*"), did not become effective as it was really a decision of the Board of the respondent Authority which called for the further redrafting of the said rule.

As it appears from its context the decision in question which was circulated to the personnel of the respondent Authority was intended to be an amendment of the powers of the General Manager in order to clarify the situation and bring the rules in line with the judgment of this Court in the case of *Cleanthous* (*supra*). There was no need to do anything else to bring it into effect. This ground therefore cannot succeed either.

The last ground of Law relied upon by the applicant is that the new General Staff Regulation (*exhibit* "*G*") were the ones governing the case of the applicant and not the old Internal Rules, as amended (*exhibit* "*F*"). This question is a substantial one because under the old Rules the General Manager could impose in the first instance any disciplinary punishment, including dismissal, whereas under the new General Staff Regulation, the General Manager or his deputy could impose only the sentences set out in paragraphs (a)–(στ) of section 34(1) thereof which do not include either demotion to a lower post, temporary dismissal up to six months, compulsory retirement or dismissal.

It has been the case for the applicant that until the decision of the General Manager was delivered on the 10th November, 1977, the old Internal Rules were in force, but for all procedural steps taken thereafter, namely the appeal from the first decision

of the General Manager which took place on the 4th February, 1978, the rehearing of the case, the appeal from the second decision of the General Manager, and the appeal and decision of the Board of the respondent Authority of the 21st September, 5 1978, which is the subject of this recourse, the new Regulations apply. In support of this proposition I have been referred to Halsbury's Laws of England, third edition, volume 35, paragraph 647 which in so far as relevant reads:

"647. *Statutes relating to procedure or evidence.* The 10 presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament. 15 Thus for example, provisions relating to the time for the bringing of proceedings are regarded in the absence of any indication to the contrary as having been intended to apply to all proceedings instituted after their commencement, notwithstanding that the cause of action arose before 20 that time ....

Provisions introducing new remedies have been classed with provisions as to procedure for the purposes of the rules relating to retrospective effect, so that they are prima facie applicable both to proceedings subsequently 25 commenced in respect of existing causes of action and to existing causes of action and to existing proceedings, whether pending before a Court of first instance or an appellate tribunal; and provisions suspending remedies are probably to be regarded as procedural in character."

30 As it appears from the aforesaid statement of the law statutes relating to procedure and evidence are to be construed as retrospective unless there is a clear indication that that was not the intention of the legislator. Section 10(2)(e) of the Interpretation Law, Cap. 1, reads as follows:-

"10(1) ....

35 (2) Where a Law repeals any other enactment, then unless the contrary intention appears, the repeal shall not-

....

(e) affect any investigation, legal proceedings, or remedy

in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid".

The Board of the respondent Authority invoked the provisions of regulation 54 of the new General Staff Regulation which reads: 5

" Ἐκκρεμῆ πειθαρχικὰ ἀδικήματα τελεσθέντα πρὸ τῆς δημοσιεύσεως τοῦ παρόντος Κανονισμοῦ δι' ἃ δὲν ἠσκήθη πειθαρχικὴ δίωξις, ἐκδικάζονται ἐπὶ τῇ βάσει τῶν κατὰ τὸν χρόνον τῆς τελέσεως αὐτῶν ἰσχυουσῶν διατάξεων." 10

It may be translated in English as follows:

"Pending disciplinary offences committed before the publication of the present regulations for which disciplinary prosecution was not exercised, are tried on the basis of the provisions in force at the time of their commission." 15

The words "δὲν ἠσκήθη πειθαρχικὴ δίωξις" which I have translated into English as "disciplinary prosecution was not exercised", can only be understood as meaning "was not exercised and completed", as that is the effect of the past tense *in which the verb "ἠσκήθη" (was exercised), has, as the past* 20 tense of a verb, generally speaking, denotes an act which commenced and was completed in the past and not an act which commenced and continues to take place.

In the light therefore of the wording of regulation 54 of the New Staff Regulation, read in conjunction with section 10(2)(e) 25 of the Interpretation Law and the general principles of the Common Law governing the question of the retrospectivity of statutes and other enactments, I have come to the conclusion that the respondent Authority rightly approached the Law on the subject and found that the Internal Rules governing the 30 present case were the old ones and the powers to impose sentence possessed by the General Manager were those given to him by those Rules.

Before concluding I would like to say that under rule 5(a) of Section (E) of the Internal Rules applicable to the present 35 case " (a) The General Manager after studying the proceedings of the Board and interviewing the accused person will decide:— Whether to dismiss the charge or whether the charge is proved."

So the interview of the applicant by the General Manager during the proceedings before him was in accordance with this rule and there was nothing illegal or contrary to any principle of justice in conducting the proceedings in that way.

5 For all the above reasons this recourse is dismissed but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.