1982 February 25

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS PAPAIOANNOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE EDUCATIONAL SERVICE COMMITTEE,

Respondents.

(*Case No.* 345/81).

Time within which to file a recourse—Article 146.3 *of the Constitution —Running of time—Time begins to run from the moment party affected gains knowledge of the decision—Where publication in the official Gazette is required by law such publication is essential for the activation of time—Notification of a decision where envisaged by law need not be effected in any solemn manner and need not extend to every detail of the decision—Where written notification is required by law dispatch of such notification is not of necessity a prelude to the activation of time where a party gains otherwise knowledge of the decision—Knowledge necessary to set in motion the time under the above Article must be extensive enough—In the event of doubt whether applicant received notice, or as to the sufficiency of the notice, such doubt must be resolved in favour of the subject—Disciplinary proceedings before respondent Committee—Decision of Committee dictated to stenographer—And read by her, on directions of the Chairman, in the presence of applicant—Time under the above Article began to run from that time onwards.*

Administrative Law—Administrative acts or decisions—Executory act—Disciplinary proceedings before Educational Service Committee—Decision of, dictated to stenographer and read by her on directions of the Chairman of the Committee—It became effective and executory in every sense after it was so read.

The applicant, an elementary school teacher, was on July 13, 1981, tried disciplinarily of the offence of absence from duty without leave. The hearing was concluded on the same day and the respondent Committee withdrew to deliberate and reflect on their decision. The decision was dictated to the Stenographer and when the hearing was resumed a short while later, in the presence of the applicant, for the purpose of pronouncing the decision, at the request of the Chairman of the respondent Committee the decision was read out by the stenographer in order to save time that would be required for its transcription. Thereafter, the Chairman of the respondent intimated to applicant that a copy of the decision would be sent to him as soon as it was transcribed and signed by himself. In fact on July 15, 1981 a copy of the decision was dispatched to applicant at the school where he last served which was not received for some time as it was the period of summer vacations and the applicant did not visit the school for weeks.

By means of the above decision the respondent passed on applicant the sentence of dismissal from the service; and applicant challenged this decision by this recourse which was filed on September 30, 1981.

On the question whether the above decision became executory, immediately after pronouncement on July 13, 1981, *and if so, whether the knowledge gained of it by the applicant was sufficient to set in motion the provisions of Article* 146.3* *of the Constitution*:

Held, (1) that where publication of a decision in the Official Gazette is required by law, such publication is essential for the activation of time under Article 146.3 of the Constitution, with regard to third parties but this is not the only source from which parties directly affected thereby may gain knowledge, and if they gain knowledge in any other way prior to publication, then, as far as they are concerned, time begins to run from the date they gained such knowledge; that notification of a decision where envisaged by law, need not be effected in any solemn manner; it can take any form provided it is effective; that noti-

* Article 146.3 provides as follows:

"3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse".

fication need not extend to every detail of the decision; that where written notification is required by the law, dispatch of such communication is not of necessity a prelude to the activation of time; and time begins to run from the moment that the party affected thereby gains knowledge of the decision and if knowledge is otherwise gained, time commences to run from then onwards; that the knowledge necessary to set in motion the time provisions of Article 146.3 must be extensive enough to acquaint the party affected thereby sufficiently of the implications of the decision on his status and position thereby enabling him to pursue remedial steps available under the law; that in the event of doubt whether the applicant received notice, or as to the sufficiency of the notice, such doubt must be resolved in favour of the subject.

(2) That the reduction of the decision of the Committee in writing, its authentication by the signature of the Chairman as well as receipt of the written notification did not constitute conditions precedent to the validation of the act; that where the respondent Committee finds a party guilty on a charge and passes sentence on the offender, the decision becomes effective immediately and executory in every sense; that the need for formalisation of the decision under reg. 7 of Part III of the second Schedule to the Public Educational Service Law, 1969 (Law 10/69) does not in any way qualify the effectiveness of the decision; that when the decision was read out by the stenographer the applicant became acquainted not only with the substance but with every detail of the decision; that thereafter it was up to him to take steps and challenge it; that the provisions of Article 146.3 of the Constitution are mandatory; and that since applicant failed to file his recourse within 75 days from the time the decision was read to him his recourse is out of time and must be dismissed.

Application dismissed.

Cases referred to:

Moran v. *The Republic*, 1 R.S.C.C. 10;

Holy See of Kitium v. *The Municipal Council of Limassol*, 1 R.S.C.C. 15;

Kariolou v. *The Municipality of Kyrenia and Others* (1971) 3 C.L.R. 455;

Neophytou v. *Republic*, 1964 C.L.R. 280 at p. 290.

Recourse.

Recourse against the decision of the respondents to dismiss applicant from his post as an elementary school teacher.

L. Papaphilippou, for the applicant.

R. Karyda-Vrahimi (*Mrs.*), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. This is a recourse for the annulment of the decision of the Educational Committee taken on 13th July, 1981, whereby the applicant, an elementary school teacher, was dismissed from his position as a teacher.

On the application of the parties, the Court set down for determination, preliminarily to the examination of the merits of the application, the question of the timeliness of the recourse. The facts relevant to the issue, as they emerge from the face of the proceedings and the joint statement made by the parties, are the following:

On 15th June, 1981, a disciplinary charge was preferred against the applicant, charging him with absence from duty without leave. The case came up for hearing soon thereafter, on 13.7.1981. The applicant admitted the charge. The Committee proceeded to hear the facts relevant to the case and heard the applicant in mitigation. Thereafter, they withdrew to deliberate and reflect on their decision. The decision was dictated to the stenographer before resuming the session of the Committee. The hearing was resumed a short while later, in the presence of the applicant, for the purpose of pronouncing their decision. To save time that would be required for the transcription of the decision, the chairman requested the stenographer to read out the decision of the Committee. Thereafter, the chairman of the Committee intimated to the applicant that a copy of the decision would be sent to him as soon as it was transcribed and signed by himself. On 15.7.1981 a copy of the decision, identical in every respect with the decision read out by the stenographer of the Committee, was dispatched to the applicant at the school where he last served. The letter was not received for some time as it was the period of summer vacations and the applicant did not visit the school for weeks.

The question arising for consideration is whether the decision became effective, that is, executory, immediately after pronounce-

ment on 13.7.1981, and if so, whether the knowledge gained of it by the applicant was sufficient to set in motion the provisions of Article 146.3 of the Constitution, laying down that a recourse must be made within 75 days of publication, or, if not published, from the day when it came to the knowledge of the person making the recourse. The recourse was filed on 30.9.1981.

Conflicting submissions were made in regard to both aspects of the case. Mr. Papaphilippou for the applicant, argued that the reduction of the decision in writing, its authentication by the signature of the chairman, as well as the receipt of a copy thereof by the applicant, constitute necessary prerequisites to the decision acquiring executory character.

For the respondents Mrs. Karyda-Vrahimi submitted that the decision was perfected upon pronouncement which, coupled with the knowledge that appellant gained of its contents apprising him of its implications and impact on his rights and position, activated the time provisions of Article 146.3. Therefore, the recourse, in her submission, is out of time.

Counsel made extensive reference to Greek case law on the nature of the notification necessary to set in motion the running of time and the sufficiency of the notice required. (Analysis in the *Conclusions of Case Law of the Greek Council of State* 1929-59, 251 et seq., and *Tsatsos' Application for Annulment*, 3rd ed., 69 et seq.). Also Mr. Papaphilippou referred the Court to an essay of N. N. Saripolos, 1911, on the subject of the activation of laws. He sought to draw an analogy between the implications of the non promulgation of a law and the implications of a written notification reaching the addressee, as in the case of Reg. 7 of Part III of the second table of the Public Educational Service Law, 1969, Law 10/69.

The analogy is ill-founded for unlike non publication of a law that renders it inoperative, omission to comply with provisions as to notification or incomplete notification, does not sap the decision in question of its executory character. (See, *Conclusions from Greek Case Law* 1929-59, 193, under 'Notification of the act'). Omission to comply with statutory provisions requiring notification is only relevant to the determination of the date from which time begins to run for purposes of a recourse, and not the finality of the act.

Another argument of Mr. Papaphilippou, based again on an analogy with the need for the formalisation of an Act is that embodiment of the decision in a formal text and signature by the authority competent to authenticate it, is a necessary prelude to the validation of the act. Again this is fallacious; the formalisation of an administrative act in any given way is not a prerequisite to its effectiveness unless the law expressly so requires, which is not the case before us.

On a review of Greek case law, as it emerges from the *Conclusions of Case Law of the Greek Council of State supra* and *Tsatsos' Application for Annulment*, supra, the following propositions emerge that should guide the Court in determining whether an act has become executory and, secondly, the date from which time begins to run.

A) Where publication in the Official Gazette is required by law, such publication is essential for the activation of time with regard to third parties. But this is not the only source from which parties directly affected thereby may gain knowledge, and if they gain knowledge in any other way prior to publication, then, as far as they are concerned, time begins to run from the date they gained such knowledge.

B) Notification of a decision where envisaged by law, need not be effected in any solemn manner; it can take any form provided it is effective.

C) Notification need not extend to every detail of the decision. So long as it adequately acquaints the party affected thereby of the result and the basis of the reasoning behind it, it will be held sufficient notwithstanding the omission of inconsequential details.

D) Where written notification is required by the law, dispatch of such communication is not of necessity a prelude to the activation of time. Time begins to run from the moment that the party affected thereby gains knowledge of the decision. Hence, if knowledge is otherwise gained, time commences to run from then onwards.

E) The knowledge necessary to set in motion the time

provisions of Article 146.3 must be extensive enough to acquaint the party affected thereby sufficiently of the implications of the decision on his status and position thereby enabling him to pursue remedial steps available under the law.

The above principles of administrative law found approval in Cyprus by the Supreme Constitutional Court, as well as the Supreme Court on numerous occasions. (See, inter alia, *John Moran* v. *The Republic*, 1 R.S.C.C. 10; *The Holy See of Kitium* v. *The Municipal Council of Limassol*, 1 R.S.C.C. 15; *Anastasis Kariolou* v. *The Municipality of Kyrenia and Others* (1971) 3 C.L.R. 455). And they may be regarded as integral aspects of Cyprus administrative law. To complete the picture, one may also refer to the principle of administrative law that in the event of doubt whether the applicant received notice or as to the sufficiency of the notice, such doubt must be resolved in favour of the subject. (See, inter alia, *Costas Neophytou* v. *The Republic* 1964 C.L.R. 280 at p. 290). Proper knowledge of the administrative act is absolutely vital for the protection of one's rights.

The gravamen of the argument for applicant is that reduction of the decision of the Committee in writing, its authentication by the signature of the chairman, as well as receipt of the written notification, constitute conditions precedent to the validation of the act. This submission runs contrary to the exposition of the law on the subject already made. Counsel relied on the provisions of reg. 7 of Part III of the second schedule of Law 10/69 as justifying the view of the law. I am unable to uphold it, and regard it as untenable. Regulation 7 merely provides for the formalities that must follow the decision. It does not, in any way, purport to condition its validity. It is the preceding rule, notably reg. 6, that regulates the taking of the decision, defines the powers of the Committee and provides for the effectiveness of the decision. Where the committee finds a party guilty on a charge and passes sentence on the offender, the decision becomes effective immediately, executory in every sense Like a decision of a court exercising criminal jurisdiction, the decision becomes effective upon pronouncement. The statutory requirement for its drawing-up, in no way suspends its effectiveness. Likewise, the need for formalisation of the

decision under reg. 7 does not in any way qualify the effectiveness of the decision.

Nor does it matter that the decision was read out by the stenographer under the authority, and subject to the supervision of the Committee. The decision was owned in every respect by the Committee and it was for all purposes its decision. Thereupon, the applicant became acquainted not only with the substance but with every detail of the decision. Thereafter, it was up to him to take steps and challenge it. That he slept on his rights, he has only himself to blame. The provisions of Article 146.3 are mandatory. They aim to sustain certainty in the administrative process, leaving no discretion to the Court to relax them. In the end, the applicant finds himself remediless.

I find that the recourse was taken out of time and, therefore, it must be dismissed. The recourse is dismissed. No order as to costs.

Application dismissed. No order as to costs.