1983 December 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

RE: APPLICATION BY C. KARAYIANNIS
AN INTERESTED PARTY

HEBE NISHIOTOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION AND/OR
THE MINISTER OF EDUCATION,

Respondents.

(*Case No.* 311/83).

Contempt of Court—For failure or refusal to comply with judgments of the Supreme Court issued in the exercise of its revisional jurisdiction—Power to punish for such contempt vests in a single judge of the Supreme Court—Articles 146.5 *and* 150 *of the Constitution—Section* 11(2) *of the Administration of Justice (Miscellaneous Provisions) Law,* 1964 (*Law* 33/64).

This was an application for the committal for contempt of Leonidas Koullis, the Director of Secondary Education, for refusal or failure to comply with judgments of the Supreme Court, issued in the exercise of its revisional jurisdiction, on 14th October, 1983 and 29th November, 1983, respectively.

Counsel for the respondents objected to the jurisdiction of a single Judge, mainly on the ground that the power of the Supreme Constitutional Court to punish for contempt, conferred by Article 150 of the Constitution, was bestowed to the Supreme Court as a collective body, by virtue of the provisions of section 11(2) of Law 33/64, and not to a single Judge to whom revisional jurisdiction was entrusted.

Held, that considering the nature of the jurisdiction and the intention of the makers of the Constitution to bestow upon the Supreme Constitutional Court a power similar to that exercised by superior English Courts to punish for contempt, it can fairly

be concluded that they intended to invest the Supreme Constitutional Court with the necessary jurisdiction to administer justice effectively; that, therefore, power to punish for contempt was not an independent species of jurisdiction but one incidental to the exercise of every jurisdiction of the Supreme Constitutional Court in the interests of the orderly and effective transaction of judicial business in fact, an attribute of its efficacy; more so, in view of the system of separation of powers entrenched in the Constitution, and the need to sustain the autonomy of the judiciary; that, consequently, sub-section 2 of s. 11—Law 33/64, by vesting the jurisdiction of the Supreme Constitutional Court under Article 146 to a single Judge, they vested jurisdiction in the same Judge functioning as a superior Court with the paraphernalia of such jurisdiction, the most significant of which is power to punish for contempt; that any contrary interpretation would be antagonistic to the nature of the power to punish for contempt, as encountered in the Constitution, and the intention of the constitutional legislator to invest every superior Court with power to punish for contempt; accordingly a single Judge of this Court has jurisdiction to take cognizance of the application (see, also, Article 146.5 of the Constitution).

Order accordingly.

Cases referred to:

Ioannides v. *Republic* (1971) 3 C.L.R. 80;

Attorney-General of the Republic v. *Ibrahim*, 1964 C.L.R. 195;

Republic v. *Vassiliades* (1967) 3 C.L.R. 82;

R. v. *Almon* [1765] Wilm. 243 at p. 254;

Balogh v. *The Crown Court* [1974] 3 All E.R. 283 at p. 290;

Prodromou v. *Republic* (1983) 3 C.L.R. 990;

Nishiotou v. *Republic* (reported in this part at p. 1483, ante).

Application.

Application by Constantinos Karayiannis, an interested party, for the committal for contempt of Leonidas Koullis, the Director of Secondary Education, for refusal or failure to comply with judgments of the Supreme Court issued in the exercise of its revisional jurisdiction.

L. Papaphilippou, for the applicant.

A. Evangelou, Senior Counsel of the Republic with *R. Vrahimi* (*Mrs.*), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. This is an application for the committal for contempt of Leonidas Koullis, the Director of Secondary Education, for refusal or failure to comply with judgments of the Supreme Court, issued in the exercise of its revisional jurisdiction, on 14th October, 1983 and 29th November, 1983, respectively.

The competence of a single Judge of the Supreme Court to assume jurisdiction for proceedings for contempt, has been questioned in view of the provisions of section 11 of the Courts of Justice (Miscellaneous Provisions) Law—33/64, particularly those of sub-section 2 The jurisdiction of a single Judge, Mr. Evangelou submitted, is limited to the areas of jurisdiction specifically assigned by sub-section 2 of section 11, and that encompasses the exercise of revisional jurisdiction as well and, matters incidental thereto. The residue of revisional jurisdiction, assigned by the Constitution to the Supreme Constitutional Court, vested, under the provisions of section 11(1)—Law 33/64, in the Supreme Court as a collective body. In support of his submission Mr. Evangelou made reference to the decision of the Supreme Court in *Ioannides* v *The Republic* (1971) 3 C.L.R. 8, and argued that it lends some support to the views propounded, affecting the limitations of the jurisdiction of a single Judge of the Supreme Court. In that case the Full Bench of the Supreme Court dealt with an application for the committal of a number of persons for contempt, for disobedience of an order of a single Judge of the Supreme Court, issued in the exercise of his revisional jurisdiction, prohibiting the deportation of the applicant. The Full Bench of the Supreme Court took cognizance of the case, as we were told by counsel for the applicant—and were able to verify from examination of the file of the case—after a written application of the applicants that the case be tried by the Full Bench on account of the seriousness of the issues raised therein and the repercussions from disobedience of the order upon society as a whole. I have gone through the judgments delivered in the above case with very great care. In none of them was the issue of jurisdiction discussed or touched upon directly or indirectly.

Objection to the jurisdiction of a single Judge, mainly rests on the premise that the power of the Supreme Constitutional Court to punish for contempt, conferred by Article 150 of the

Constitution, was bestowed to the Supreme Court as a collective body, by virtue of the provisions of section 11(2) of Law 33/64, and not to a single Judge to whom revisional jurisdiction was entrusted. The jurisdiction of a single Judge is strictly limited to the instances explicitly enumerated in sub-section 2. A necessary implication of this submission, as counsel for the Attorney-General acknowledged, is that a single Judge of the Supreme Court exercising revisional jurisdiction, cannot claim jurisdiction to punish for contempt, at any stage of the proceedings, before, at the time or after the hearing. Only the Full Bench of the Supreme Court has such power.

Mr. Papaphilippou opposed the submission of Mr. Evangelou and contended that the entrustment of revisional jurisdiction of the Supreme Constitutional Court to a single Judge, necessarily implied transfer of all the powers of the Supreme Constitutional Court to deal effectively with a case including power to punish for contempt at any stage of the proceedings, including the aftermath of the trial.

The starting point in the process of resolution of the issue raised before us, is section 9 of Law 33/64, vesting in the Supreme Court established under the provisions of section 3 of the same law, the jurisdiction formerly exercised by the two superior Courts of the land, namely the Supreme Constitutional Court and the High Court. In the face of disintegration of the two superior Courts on account of the events of 1963-64, need arose to enact a law to fill the vacuum and make possible the functioning of the judicial authorities of the State in the interests of social order. The Law, notably Law 33/64, was tested and found to be constitutional in the case of *The Attorney-General of the Republic* v. *Ibrahim And Others*, 1964 p. 195. The Supreme Court established by Law 33/64, inherited the jurisdiction of the two superior Courts it replaced, and became the custodian of their powers.

Now, the exercise of the jurisdiction and powers of the Supreme Court, are regulated by the provisions of s.11. Sub-section 1 of section 11 invests the Supreme Court as a collective body with the jurisdiction formerly exercised by the two superior Courts, subject to two reservations:-

(a) The exeptions envisaged by sub-sections 2 and 3 of the same section of the law, and

(b) exceptions or modifications embodied in subsidiary legislation enacted by the Supreme Court.

The Rules then in existence, including the Rules pertaining to the functioning of the Supreme Constitutional Court, were saved by the proviso to section 17 of Law 33/64. The only decision shedding some light on the interpretation of the provisions of s.11 and the relationship between its three sub-sections, is that of *The Republic* v. *Vassiliades* (1967) 3 C.L.R. 82. The main issue before the Court in the above proceedings affected the appellate jurisdiction of the Supreme Court. It was decided by majority, Josephides, J. dissenting, that the provisions of sub-section 3 purporting to regulate the appellate jurisdiction of the Supreme Court, were limited in their application to the exercise of the appellate jurisdiction formerly exercised by the High Court on appeals from inferior Courts. Appeals from a single Judge of the Supreme Court under the provisions of the proviso to sub-section 2 of section 11, lay before the Full Bench. Little, if any, guidance can be derived from the above decision; certainly, it offers no guidance on the subject of the jurisdiction of a single Judge exercising revisional jurisdiction to punish for contempt. The submission of Mr. Evangelou that sub-section 2 of section 11 does not in terms specifically confer jurisdiction upon a single Judge of the Supreme Court to punish for contempt, is well founded. Consequently, unless we conclude that power to punish for contempt is not an independent jurisdiction but a jurisdiction inherent in every Court administering justice ancillary to the exercise of its judicial functions, I must decline to assume jurisdiction and adjourn the matter before the Full Bench of the Supreme Court. The issue I must determine is a serious one. I took time to study the matter and reflect upon the implications of the rival submissions.

Article 150 of the Constitution is couched in general terms and empowers the Supreme Constitutional Court to punish "for contempt of itself". It is relevant to notice that jurisdiction to punish for contempt is a peculiar feature of the English legal system, not encountered in the same form in other legal systems. Therefore, we can validly presume that the constitutional drafters, in enacting Article 150, intended to bestow upon the Supreme Constitutional Court a power comparable

to that exercised by Courts of record in England. This view is reinforced by a comparison of the provisions of Article 150 with those of Article 162 conferring upon the High Court and Courts subordinate thereto, power to punish for contempt. The inescapable inference is that the makers of the Constitution intended to invest the Courts established therein, as well as subordinate Courts in the judicial hierarchy, with power to punish for contempt, in much the same way as English Courts of record exercise a similar jurisdiction. It appears, therefore, profitable to explore, albeit briefly, the origin and nature of the jurisdiction to punish for contempt exercised by English Courts. Under English common law, jurisdiction to punish for contempt vests in every Court of record, and that includes every superior Court and certain inferior Courts. It is a jurisdiction recognised ab antiquo to vest in every superior Court in the interests of the administration of justice. In the words of Wilmott C.J., in the celebrated opinion in *R.* v. *Almon* (1965) Wilm. 243, 254, the jurisdiction of a superior Court to punish for contempt it depicted in these terms: "It is a necessary incident of every Court of justice . . to fine and imprison for a contempt to the Court ". *Bracton* in the *History of English Law*, expressed the view there is no offence greater than the contempt and disobedience to orders of the Court—See, *Borrie and Lowe* on the *Law of Contempt*, 1973, p. 3. A more contemporary appreciation of contempt comes from *Justice*, the Organisation of Lawyers, who made an evaluation of its significance in modern times in their 1959 Report, identifying contempt with the very existence of the legal system. "A Court" they said, "should have ample powers to enforce its orders and to protect these from abuse of itself or its procedure". *Oswald*, in his classic work on *Contempt*, defines it in the following terms: "To speak generally, contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation".

The nature of the jurisdiction is, if I may say so with respect, explained in perfect clarity by *Stephenson* L.J., in *Balogh* v. *The Crown Court* [1974] 3 All E.R. 283 at p. 290 (letter *I*) and p. 291 (letter *A*): "If they are to do justice, they need power to administer it without interference or affront, as well as to

enforce their own orders and to punish those who insult or obstruct them directly or indirectly in the performance of their duty or misbehave in such a manner as to weaken or lower the dignity and authority of a Court of law. Indirect interference with judicial proceedings may now be the more serious and the more frequent kind of contempt, though it was insulting behaviour in Court which once called for punishment of even more horrifying severity". Immediately preceding the above quotation the learned judge notes that the power to punish for contempt is as old as the Courts themselves "necessary for the performance of their functions of administering justice ". The learned authors of *Halsbury's Law of England* subscribe to the proposition that jurisdiction to punish for contempt, is a jurisdiction inherent in every superior Court—See, *Halsbury's Laws of England, 4th ed., Vol. 9, para. 3.*

Considering the nature of the jurisdiction and the intention of the makers of the Constitution, as analysed above, to bestow upon the Supreme Constitutional Court a power similar to that exercised by superior English Courts to punish for contempt, we can fairly conclude that they intended to invest the Supreme Constitutional Court with the necessary jurisdiction to administer justice effectively. Therefore, power to punish for contempt was not an independent species of jurisdiction but one incedental to the exercise of every jurisdiction the Supreme Constitutional Court in the interests of the orderly and effective transaction of judicial business; in fact, an attribute of its efficacy. More so, in view of the system of separation of powers entrenched in the Constitution, and the need to sustain the autonomy of the judiciary. Consequently, sub-section 2 of s. 11—Law 33/64, by vesting the jurisdiction of the Supreme Constitutional Court under Article 146 to a single Judge, they vested jurisdiction in the same Judge functioning as a superior Court with the paraphernalia of such jurisdiction, the most significant of which is power to punish for contempt. Any contrary interpretation would be antagonistic to the nature of the power to punish for contempt, as encountered in the Constitution, and the intention of the constitutional legislator to invest every superior Court with power to punish for contempt.

Moreover, Article 146.5 of the Constitution imposes a specific

duty upon authorities of the State to comply with judgments and orders of the Court in the exercise of its revisional jurisdiction, and associates this duty with the exercise of revisional jurisdiction of the Supreme Court. In *Prodromou* v. *The Republic* (1983) 3 C.L.R. 990, *Malachtos, J.*, assumed, without any jurisdictional objection from counsel for the Republic, jurisdiction to inquire into whether an order of the Court was complied with by administrative organs of the State. Jurisdiction was assumed within the context of the revisional jurisdiction of the Court. I assumed the exercise of a similar jurisdiction in *Nishiotou* v. *The Republic* (Reported in this part at p. 1483, ante). In my judgment, Article 146.5 confers, independently of the provisions of Article 150 of the Constitution, jurisdiction to inquire into whether a judgment or an order of the Court was complied with.

An additional ground for claiming jurisdiction in contempt proceedings, is found in the provisions of rule 18 of the Rules of the Supreme Constitutional Court, making applicable, subject to necessary modifications, the provisions of the Civil Procedure Rules, including Order 43(A) regulating the power of the Court to punish for contempt. The definition of "Court" given by rule 2 of the Civil Procedure Rules, leaves no doubt that jurisdiction vests in a single Judge to deal with an application for committal for contempt.

It is interesting to notice that common law countries that adopted or evolved administrative law as a distinct jurisdiction of the Courts, have extended contempt jurisdiction to Courts exercising revisional jurisdiction. Notable examples are the Republic of Ireland and Canada—(See, papers submitted by the Representatives of Canada and Ireland in the recent "Constituent Congress of the International Association of Supreme Administrative Jurisdictions", held in Paris on 8–9 December, 1983).

A survey of the powers of administrative Courts, modelled on the continental precedent to deal with recalcitrant administrative authorities*, reveals a steady trend towards vesting

* See, papers submitted by Representatives of countries to the "Constituent Congress of the International Association of Supreme Administrative Jurisdictions", held in Paris on 8–9 Dec., 1983.

power in administrative Courts to impose punishments for refusal to obey or give effect to judgments of administrative Courts. A notable example is the decree of 16th July, 1980, empowering the Council of State of France to impose financial penalties on juridic and artificial persons in the interests of enforcing compliance with orders of the Court. In Italy, the Judge is empowered, in the face of refusal of the authorities to implement a decision of the administrative Court, to nominate a commissioner ad acta to take, on behalf of the Administration, all necessary measures to ensure compliance with an order of the Court.

For all the above reasons, I conclude that I have jurisdiction to take cognizance of the application A date will be given for its hearing

Order accordingly.