1983 April 15

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SPYROS PLOUSSIOU,

Applicant,

v.

THE CENTRAL BANK OF CYPRUS,

Respondents.

(*Case No.* 425/81).

Subsidiary Legislation—Must strictly comply with the provisions of the empowering Law—Central Bank of Cyprus Employees (Conditions of Service) Regulations, 1964—Made by virtue of s.13(2)(b) of the Central Bank of Cyprus Law, 1963 (Law 48/63)—Not approved by the Council of Ministers as provided by the empowering section—Invalid for non-compliance with enabling Law—And also for non-publication in the official Gazette—Sections 2 and 7 of the Interpretation Law, Cap.1—Said Regulations not severable.

The applicant in this recourse challenged the validity of the promotion of the interested party to the post of Assistant Manager in the Central Bank. The promotion was made under the provisions of the Central Bank of Cyprus Employees (Conditions of Service) Regulations, 1964; and the sole issue in this recourse was whether these Regulations were valid. The Regulations were made by virtue of the provisions of s.13(2)(b) of the Central Bank of Cyprus Law, 1963 (Law 48/63) and it was contended on behalf of the applicant that they were invalid because

(a) They did not emanate from those to whom power was delegated to make rules for the personnel structure of the Bank, in particular, that they did not have the sanction of the Council of Ministers or the Minister of Finance who replaced them as the sanctioning authority

in virtue of an amendment to the law introduced by s.2 of Law 10/79 and,

(b) they were never published in the Gazette, a step necessary for their coming into being.

Held, that section 13(2)(b) of Law 48/63 envisaged the approval of the Council of Ministers as a necessary prelude to the issuing of any Regulations, regulating the terms and conditions of service of employees of the Bank; that the rule-making power must be exercised strictly within the four corners of the law, conferring power to make regulations; that it is upon this condition of strict compliance with the provisions of the empowering law that subsidiary legislation can be validly enacted; that any deviation therefrom, constitutes a usurpation of legislative power that must necessarily be struck down as contrary to law; that inevitably this must be the fate of the 1964 Personnel Regulations of the Central Bank of Cyprus. The Council of Ministers did not approve them. They had no lawful origin and they are abortive for non-compliance with the law.

Held, further (1) *on the question whether part of the Regulations i.e. the Schemes of Service are valid as being severable from the rest of the Regulations:*

That the schemes of service were inextricably connected with the 1964 Regulations and, as such, they are unseverable therefrom.

(2) That the 1964 Regulations were a public instrument within the meaning of section 2 of the Interpretation Law, Cap.1, made in exercise of powers vested by Law and that their publication in the Gazette was an indispensable step for their valid enactment; that in the absence of publication the Regulations in question never came into being; and that, therefore, the sub judice appointment must be annulled as founded on non-existing regulations.

Sub judice decision annulled.

Cases referred to:

Nicolaides and Another v. Yerolemi (1982) 1 C.L.R. 656 at pp. 661, 663;

Stock v. Frank Jones (Tipton) Ltd. [1978] 1 All E.R. 948;

Cummins Ballrooms Ltd. v. Zenith Investments (Torquay) Ltd. [1970] 2 All E.R. 871 at p. 893 (H.L.);

Nortman v. London Borough of Barnet [1978] 1 All E.R. 1243 (C.A.);

Malachtou v. Attorney-General [1981] 1 C.L.R. 540 at p. 550;

Ishin v. Republic, 2 R.S.C.C 16 at p.20

Recourse.

Recourse against the decision of the respondent to appoint the interested party to the post of Assistant Manager in the Central Bank in preference and instead of the applicant.

L. N. Clerides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

P. Polyviou, for interested party.

Cur. adv. vult.

PIKIS J. read the following judgment. The Personnel Committee of the Central Bank of Cyprus met on 6.8.1981 to make recommendations for the filling of four vacancies of Assistant Manager. The choice was between six senior officers of the Bank shortlisted for promotion. Applicant was one of them. They recommended the promotion of four candidates other than the applicant, a decision promptly implemented by the Governor in exercise of his powers under s.15 of the Central Bank of Cyprus Law—48/63. The applicant contested his exclusion and challenged the promotion of the appointees by the present recourse and recourse 474/81. Against three of the interested parties, the recourses were, the Court found, out of time and were dismissed. (See the decision of the Court of 10.4.1982)* There remained the recourse against Kyriacos Bagdatis, the interested party, presently to be dealt with.

The appointments were made by the Governor, as earlier noted, on the recommendations of the Personnel Committee that he chaired, in accordance with the provisions of s.15(3) of the law. In making their selection, the Personnel Committee were guided, as stated in the record of their deliberations, by the criteria laid down in r.11 of the Central Bank of Cyprus

* Reported in (1982) 3 C.L.R. 230

—Employees (Conditions of Service) Regulations, 1964, establishing the basis upon which promotions should be made, i.e. merit, experience and qualifications. The decision is challenged on factual and legal grounds. Factually, the decision is faulted for failure of the appointing body to appreciate the realities relevant to the candidates correctly, particularly their omission to pay due heed to the seniority of the applicant, allegedly conferring a decisive advantage on him. At the trial, applicant abandoned every suggestion that the decision taken is vulnerable for failure to make a proper evaluation of the facts relevant to each candidate. He rested his case primarily on the contention that the aforesaid regulations under which the appointments were made, were invalid and, consequently, every act, such as the appointments made, found thereon, is as ineffective as the Regulations. In the submission of applicant, the aforementioned Employees' Regulations of the Central Bank lack validity because—

(a) They did not emanate from those to whom power was delegated to make rules for the personnel structure of the Bank, in particular, that they did not have the sanction of the Council of Ministers or the Minister of Finance who replaced them as the sanctioning authority in virtue of an amendment to the law introduced by s.2 of Law 10/79 and,

(b) they were never published in the Gazette, a step necessary for their coming into being.

Also, the mechanism for appointments laid down by s.15(3) is impugned as irremedially defective for contravention of the rules of natural justice ingrafted in our Constitution and pervading our legal system. The entrustment of power to the Governor to make the appointments was incongruous with his participation as Chairman of the Personnel Committee, an incongruity offending natural justice. Lastly, Ministerial approval for the schemes of service—if that was all for which approval was required by law and not the Regulations in their entirety—it was signified in an irregular manner, i.e. orally, an irregularity that allegedly saps the schemes of validity.

For the respondents and the interested party, it was submitted

that the appointments were validly made on the basis of schemes of service properly sanctioned by the Minister of Finance, established under the 1964 Regulations that were validly made. Their case is that, the approval of the Council of Ministers—or after 1979 that of the Minister of Finance—was not a condition precedent to the enactment of the Regulations. Approval was only required for the schemes of service. Nor was publication necessary for the validation of the Regulations for, the Regulations were an internum of the Central Bank that need not be brought to the notice of the public by publication in the Gazette. And the consent of the Minister to the schemes of service could be signified in any reasonable manner, including approval by word of mouth. Further, the provisions of the law regulating the procedure for appointments, in no way offended the rules of natural justice. Therefore, I was invited to dismiss the recourse.

The interpretation and construction of the provisions of s. 13(2)(b) of the Central Bank of Cyprus Law is in the centre of the controversy of the parties. Decision on this aspect of the case is crucial to the outcome of the proceedings. What must be decided is whether the law required the approval of the Council of Ministers (later the Minister of Finance) for the enactment of the Regulations. If the Regulations did not emanate from those to whom power was entrusted to make them, they are not an authentic expression of legislative authority. The genesis of the Regulations is questioned. This shall be the first question to which we shall direct our attention. The second, likewise concerns the genesis of the Regulations for, if publication was required by law, by omitting to publish them, they failed to put them into the statute book. They cannot be invoked for any purpose. If we conclude that the Regulations never came into being, because the process of their creation was abortive, we need not concern ourselves with the remaining issues, relevant only in the event of holding that the Regulations are valid.

The Interpretation and Construction of section 13(2) *of Law* 48/63 *and the Validity of Employees Regulations, purportedly made thereunder:*

In the submission of Mr. Polyviou who argued the case on behalf of his client, as well as that of the respondents, the English

text of the Central Bank of Cyprus Law should be consulted as a proper aid for the interpretation of s.13(2)(b). Such reference is essential in order to depict legislative intent in the light of the history of the enactment of Law 48/63 and the fact that the Central Bank of Cyprus Law first formulated in the English language. Reference to the English text is necessary for a proper interpretation of the expression "όροι ύπηρεσίας" in the context of s.13(2)(b). This expression must be construed as connoting schemes of service, notwithstanding the manifest differences in meaning between the two expressions and, the absence of real synonymity between them. In advancing this submission, reliance was placed upon an opinion of the learned Attorney-General given on 3.7.1974. The opinion was not adopted in its entirety; only that part that suggests that the aforesaid expression "όροι ύπηρεσίας" should be construed as meaning, in the context of s.13(2)(b), "σχέδια ύπηρεσίας". The Attorney-General argued that reference to the English text is assential because it was the original text in which the law was drafted and, inasmuch as the Greek text purported to be a translation of it, reference to the English text is permissible. If the approval of the Council of Ministers was required for anything other than the schemes of service, s.13 (2)(b) could be expected to be differently worded. The view, in the opinion of the learned Attorney-General, that the expression "όροι ύπηρεσίας" should be restrictively interpreted and limited to mean "schemes of service", is reinforced by the use of the same expression in s.17(2) of the same Law, in a sense that could not mean anything other than schemes of service. Mr. Clerides who argued the case for the applicant submitted that, no matter which text of the Central Bank of Cyprus Law we rely upon, the same conclusion is inevitable. Approval of the Council of Ministers was a condition precedent to the validation of any rules made under s.13(2)(b), regulating conditions of service of employees of the Bank. But the Greek text was stronger still and eliminated any doubt that might conceivably be entertained about the need for approval by the Council of Ministers. In his submission, the expression "όροι ύπηρεσίας" is one that easily lends itself to interpretation and encompasses not only schemes of service but every term and condition regulating the service of employees of the Bank.

I consider it necessary to recite hereinbelow the provisions

of s.13(2)(b) of the Central Bank of Cyprus Law, as they stood at the time of the issuing of the Regulations of 1964, preliminary to attempting to extract the meaning of the crucial expression "ὅροι ὑπηρεσίας":-

Section 13(2):-

" Ἄνευ ἐπηρεασμοῦ τῆς γενικότητος τοῦ ἐδαφίου (1) τὸ Συμβούλιον κέκτηται ἐξουσίαν ὅπως:-

(α) .....

(β) τηρουμένων τῶν διατάξεων τῶν ἐκάστοτε ἐν ἰσχύϊ νόμων, ἐκδίδει τὴ συστάσει τοῦ Διοικητοῦ κανονισμοὺς διέποντας τὴν ἐσωτερικὴν ὀργάνωσιν τῆς Τραπέζης, καθορίζοντας, τῇ ἐγκρίσει τοῦ Ὑπουργικοῦ Συμβουλίου, τοὺς ὅρους ὑπηρεσίας ἁπάντων τῶν ἀξιωματούχων καὶ ὑπαλλήλων τῆς Τραπέζης, καὶ ρυθμίζοντας τὰς ἐξουσίας καὶ καθήκοντα αὐτῶν ὡς καὶ τὴν ἐπὶ τῶν ἀξιωματούχων καὶ ὑπαλλήλων τούτων ἄσκησιν τοῦ πειθαρχικοῦ ἐλέγχου".

English Translation:

(*Section* 13(2):

"Without prejudice to the generality of the provisions of sub-section 1, the Board has power to—

(a) .....

(b) subject to the provisions of the laws in force at anyone time to make, on the recommendation of the Governor, regulations governing the internal organisation of the Bank, specifying, with the approval of the Council of Ministers, the terms and conditions of service of all officers and personnel of the Bank and, regulating their powers and duties, as well as the exercise of discipline upon officers and members of the staff of the Bank").

I consider it altogether irrelevant to reproduce the text in which the law was first drafted, as suggested, in English for, it is not a permissible aid for the interpretation of the law. The wording of the statute is the only authoritative source wherefrom to gather the intention of the legislature. (See, *Nicolaides & Another v. Yerolemi* (1982) 1 C.L.R. 656, 661, 663). To uphold the submission for the respondents that a law should be read and

construed subject to the provisions of a Bill drawn in a language other than that of the law, would be tantamount to subordinating legislative intent to the will of the administration and it would defeat the constitutional principle that the House of Representatives is the sole legislative authority of the country.

The first step in the process of interpreting a section of the law, is to consult its wording and the language employed by the legislature to signify its will. When the language of the statute is plain, need rarely arises to go any further in discerning legislative intent. Every section of the law constitutes in itself a legislative command. Section 4 of the Interpretation Law, Cap. 1, lays down that, every section of the law shall have effect as a substantive enactment without introductory words. It would be an unacceptable interference with the exercise of legislative power if Courts were to place upon Statutes an interpretation supposedly better in accord with the scheme of a law. Courts interpret the laws, they don't make them.

Not even the existence of anomalies, if any, arising from the application of a statute, constitutes a ground for ignoring or modifying the language employed by the legislature, or the meaning naturally imported therefrom. The subject was debated at length by the House of Lords, in *Stock v. Frank Jones (Tripton) Ltd.* [1978] 1 All E.R. 948. They rejected the argument that the wording of s.8(2)(a) of the Trade Union and Labour Relations Act should be disregarded because of the anomalies to which it was likely to lead. The likelihood of anomalies arising from an interpretation of the law, along the lines suggested by its wording, is not in itself a warrant for overriding the will of the legislature. Only when it leads to absurdity of a kind that could not be attributed to the legislature, can there be departure from the wording of the law, provided always that its wording is susceptible to that interpretation, be it with a degree of strain. (See, the judgment of Lord Simon of Glaisdale).

The above observations are made by way of parenthesis for, in this case there is no suggestion that interpreting the expression "δροι ὑπηρεσίας" in its natural and popular sense, would lead to any anomalies. Far from it, it is in line with the powers reserved to government to oversee a constitutional branch of the State, such as the Central Bank. And the code

regulating terms and conditions of service of personnel is all important to its proper functioning. A section of the law must be read in the context of the enactment as a whole in order to properly appreciate its scope and give effect to it in a manner compatible with the purposes of the law. Emphasis is increasingly placed upon a purposive interpretation of a statute. (See, *Cummins Ballrooms Ltd. v. Zenith Investments (Torquay) Ltd.* [1970] 2 All E.R. 871, 893 (H.L.) and, *Nortman v. London Borough of Barnet* [1978j 1 All E.R. 1243 (C.A.). But a purposive approach does not imply subordination for purposes of interpretation of the provisions of one section to those of another or departure from the plain provisions of a section of the law. Assuming that the expression "όροι ύπηρεσίας" in s.17(2) of the Central Bank of Cyprus Law, means "schemes of service" - an interpretation that I doubt - that would not offer any ground for departing from the plain meaning of the expression, as used in s.13(2)(b).

In my judgment, s.13(2)(b) envisaged the approval of the Council of Ministers as a necessary prelude to the issuing of any Regulations, regulating the terms and conditions of service of employees of the Bank. The expression "όροι ύπηρεσίας" connoted terms and conditions of service. Not only there is nothing in s.13(2)(b) of the law limiting the meaning of the expression in the manner suggested but, what follows thereafter makes it abundantly clear that such approval was specifically necessary for all matters relevant to the powers and duties of employees of the Bank, as well as the exercise of discipline over them.

The 1964 Regulations were styled as regulations designed to regulate conditions of service of employees of the Bank and that was what they purported to accomplish, on a reading of them. Terms and conditions of service include such matters as those relating to the power to establish a post, the terms upon which office is held, the remuneration of personnel and, generally matters incidental to employment and service of staff.

The Personnel Regulations of the Central Bank of Cyprus, issued in 1964, were abortive for non compliance with the law. The rule-making power must be exercised strictly within the

four corners of the law, conferring power to make regulations. It is upon this condition of strict compliance with the provisions of the empowering law that subsidiary legislation can be validly enacted. Any deviation therefrom, constitutes a usurpation of legislative power that must necessarily be struck down as contrary to law. Inevitably this must be the fate of the 1964 Personnel Regulations of the Central Bank of Cyprus. The Council of Ministers did not approve them. They had no lawful origin.

Mr. Polyviou invited me to proclaim as valid part of the Regulations, i.e. the schemes of service, severable in his contention, from the rest of the rules. It is common ground that the schemes of service received approval from the Minister of Finance, the competent approving authority, at the time of their making. In *Malachtou v. Attorney-General* (1981) 1 C.L.R. 540, 550, we discussed the circumstances under which the untainted part of a body of Rules may be extricated from the remainder, ultra-vires the law. This can only be done, provided the dissection or division will not produce artificial and uncontemplated results. Such amenity exists when the part proposed to be severed is self-contained, intrinsically independent from the rest of the regulations. To undertake the exercise, the rules must be readily divisible, particularly from the view point of theme. Severance can be upheld if the division does not destroy the fabric of the Rules. It does not destroy the fabric of the law if the part severed retains its compactness and is independent from the part condemned.

In the case of the Central Bank of Cyprus Regulations, the schemes of service were directly dependent on and subsidiary to the Regulations. To divorce them therefrom, would render them meaningless. The schemes of service were the offspring of the job-creating powers vested in the Board by r.5(1) and made provision for a salary, subject to the prior approval of the Board, as provided in r.17. The schemes of service were not but a tool for the manning of the various sections of the Bank subject, in the case of promotions, to the provisions of r.8. The schemes of service were inextricably connected with the 1964 Regulations and, as such, unseverable therefrom. In my judgment, the 1964 Central Bank of Cyprus Employees' Regu-

lations are invalid. So is every decision found or deriving therefrom, such as the sub judice appointment of the interested party to the post of Assistant Manager.

Even if I were to hold that the 1964 Regulations, or part of them, emanated from the sources specified by law, I would still rule that the Regulations are invalid for lack of publication in the Gazette.

Publication of Regulations in the Gazette:

It was argued for the respondents and the interested party, that the Central Bank of Cyprus Employees' Regulations need not have been published, as they did not concern the public but the employees of the Bank. To the latter, copies of the Regulations were distributed. As an internum of the Bank, it need not see light by publication in the Gazette. Mr. Polyviou drew my attention to the absence of any legal obligation in England, making mandatory publication in the Official Gazette, of instruments made by authority. (See, *H. W. R. Wade, Administrative Law,* 4th ed., p.423 et seq). The command of Parliament for publication of statutory instruments, is of a directory character; therefore, non publication is not fatal to the validity of the Regulations. The provisions of the Statutory Instruments Act, 1946, are consonant with the aforesaid statement of the law.

Also reference was made to Greek jurisprudence on the implicasions of non publication of statutory instruments. The position in Greece is, as I understand it, that publication is a necessary step for the perfection of every piece of subsidiary or secondary legislation. (See, *Dagtoglou - General Administrative Law,* Vol.1, pp. 62, 71; *Papahatzis - System and Lessons of Administrative Law,* 1949-1952, p.422 et seq; see, also, *Conclusions from Jurisprudence of the Greek Council* 1929-59, p.193).

Publication of laws is necessary in the interests of certainty of the law and, for the protection of the right of the public to know the law of the country. The irrebutable presumption that every citizen knows the law, would gradually lose its force if the public were credited with knowledge of laws never communicated to them. The proposition that every species of legislation must be published in the Gazette, is fully consonant with the

letter and spirit of the Constitution. Article 82 of the Constitution lays down that a law or decision of the House of Representatives shall come into operation on its publication in the Official Gazette, unless another date is provided for such law or decision. Subsidiary legislation is a by-product of a legislative act and derives its force from the parent law. Publication is equally necessary, if not, more so in view of the need to ensure that the limits set by the enabling law are not transgressed. In Cyprus, the need for publication, in the Official Gazette, of subsidiary or secondary legislation, is a condition precedent to its validity. The provisions of the Interpretation Law - Cap. 1, leave no room for doubt. Section 7 of Cap.1 provides that, "any public instrument made or issued under any law or other lawful authority and, having legislative effect, shall be published in Gazette...." The employment of the word "shall", makes it abundantly clear that publication in the Gazette is a condition precedent to the validity of every public instrument made under a law. A public instrument is defined by s.2 of Cap.1 and includes, inter alia, regulations, rules and bye-laws. The 1964 Central Bank of Cyprus Employees' Regulations were a public instrument within the meaning of s.2, made in exercise of powers vested by law. Publication in the Gazette was an indispensable step for their valid enactment. (One may note with benefit, the observations of the Supreme Constitutional Court in *Ilter Ishin v. The Republic,* 2 R.S.C.C. 16, 20, that it is desirable that schemes of service be published as well in the Official Gazette, for general information). In the absence of publication, the Regulations in question never come into being. Hence the sub judice decision would inevitably founder on this ground, i.e. lack of publication in the Gazette, even if it surpassed all other hurdles.

In the light of the above, the sub judice appointment must be annulled as founded on non existing regulations. I consider it unnecessary to dwell on any of the remaining grounds put forward in support of the application, in view of the decision reached.

In the result, the sub judice decision is annulled. No order as to costs.

Sub judice decision annulled.
No order as to costs.