1984 August 22

[A. LOIZOU, MALACHTOS AND STYLIANIDES, JJ.]

GLAMOR DEVELOPMENT LTD.,
Appellants-Defendants,

v.

CHRISTODOULOS CHRISTODOULOU,
Respondent-Plaintiff.

(*Civil Appeal No.* 6629).

Contract—Illegality—Section 23 *of the Contract Law, Cap.* 149—*Contract of service or services by a public officer, without the permission of the Minister of Finance under section* 64 *of the Public Service Law,* 1967 (*Law* 33/67)—*Illegal because it is forbidden by the said section* 64 *of Law* 33/67—*Moreover it is illegal as opposed to public policy—Therefore the consideration for such contract is unlawful and the contract is void—Sections* 10(1) *and* 23 *of Cap.* 149 (*supra*).

Public Officers—Contracts for services by—Without permission of the Minister of Finance under section 64 *of the Public Service Law,* 1967 (*Law* 33/67)—*Void for illegality—Sections* 10(1) *and* 23 *of the Contract Law, Cap.* 149.

The appellants were a company limited. The respondent plaintiff who was a public officer holding the post of Senior Civil Engineer in the Water Development Department of the Republic was married to the sister of the Managing Director of the appellants. In November, 1979, the respondent agreed with the appellants to draw and prepare for them architectural drawings, specifications, etc. for the erection of a building of theirs at the agreed remuneration of 2 1/2% on the amount of the construction of the building and 2 1/2% for the supervision of the execution of the project. Drawings and specifications were prepared by the respondent; tenders were invited and a building contractor was awarded the contract at the agreed amount of £98,000. The drawings and specifications, etc., were signed by P.W. 2, Neophytos Demetriou, a Registered

Civil Engineer under the Architects and Civil Engineers Law, for the purpose of submitting same to the appropriate authority for the issue of the relative building permit. The reason given for this was that, under the relevant Law, the respondent was not entitled to sign the said documents. Due to family disputes the marriage of the respondent was disrupted and ultimately dissolved; and the appellants engaged other architects for the supervision of the execution of the works. Nothing was paid to the respondent for his agreed remuneration and he resorted to the District Court of Nicosia claiming £2,450.- agreed and/or reasonable remuneration for services rendered, as aforesaid. The appellants-defendants by their statement of defence contended that the contract was illegal* and, consequently, void. The trial Judge held that the Public Service Law, 1967 (Law 33/67) simply regulates the conditions of service of public servants: that it did not restrict their right to private employment; that violation of section 64 of Law 33/67 gave rise only to a disciplinary offence; and that the contract was not vitiated by illegality.

Upon appeal by the defendants the following issue arose for consideration:

Was a contract of service or services of a public officer without the permission of the Minister of Finance, contrary to s.64 of the Public Service Law, 1967 (Law No. 33/67), void for illegality.**

Held, that the contract is illegal as it infringes the provisions of section 64 of the Public Service Law, 1967 (Law 33/67); that it is illegal because it is forbidden by Law; that it is illegal because, if permitted, it would defeat the provisions of the same Law; and it is illegal as opposed to public policy; that consequently, under the provisions of s.23 of the Contract Law, Cap. 149, the consideration of the agreement of the litigants was unlawful; and that in view of the provisions of s.10(1) and s. 23 of the Contract Law, the agreement is void as the consideration was unlawful; and that accordingly the appeal must be allowed.

Appeal allowed.

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* The contention was based on section 64 of the Public Service Law, 1967 (Law 33/67) which is quoted at pp. 448–449 post.

** Illegality of contracts is governed by section 23 of the Contract Law, Cap. 149 which is quoted at p. 449 post.

Cases referred to:

HjiTheodossiou v. Koulia and Another (1970) 1 C.L.R. 310;

Universal Advertising and Publishing Agency v. Vouros, 19 C.L.R. 87 at p. 94;

Marcou v. Michael, 19 C.L.R. 282;

Tseriotis v. Christodoulou, 19 C.L.R. 216;

Queen v. Herodotou, 19 C.L.R. 144;

Protopapas v. Gunther and Another (1974) 12 J.S.C. 981;

Konaris v. Tosoun (1969) 1 C.L.R. 637;

Archbolds (Freightage) Ltd. v. S. Spanglett Ltd., Randall (Third Party) [1961] 1 All E.R. 417;

Cope v. Rowlands, 150 E.R. 707 at p. 710;

Liverpool Borough Bank v. Turner [1860] 30 L.J. Ch. 379;

Vita Food Products v. Unus Shipping Co. [1939] 1 All E.R. 513 at p. 523;

St. John Shipping Corp. v. Joseph Rank Ltd. [1956] 3 All E.R. 683 at p. 687;

Shaw v. Groom [1970] 1 All E.R. 702;

Egerton v. Brownlow [1843-60] All E.R. Rep. 970 at p. 995;

Mogul Steamship Co. v. McGregor Gow and Co. [1892] A.C. 25 at p. 45 (H.L.);

In re Mirams [1891] 1 K.B. 594;

Janson v. Driefontein Consolidated Mines Ltd. [1902] A.C. 484 at p. 491;

South Pacific Co. v. Jensen (1917) 244 U.S. 205 at p. 221;

Fender v. Mildmay [1937] 3 All E.R. 402;

Holman v. Johnson [1775] 1 Cowp. 343;

Scott v. Brown, Doering, McNab & Co. [1892] 2 Q.B. 728;

North - Western Salt Co. Ltd. v. Electrolytic Alcalic Co. Ltd. [1914] A.C. 461;

Snell v. Unity Finance Ltd. [1963] 3 All E.R. 50.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Kronides, D.J.) dated the 17th October, 1983 (Action No. 557/82) whereby they were ordered to pay to plaintiff the sum of £2,450.- as his remuneration for the drawing and

preparation for the defendants architectural drawings for the erection of a building.

A. E. Pandelides, for the appellants.

D. Papachrysostomou, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This appeal raises a single but very important question: Is a contract of service or services of a public officer, without the permission of the Minister of Finance, contrary to s.64 of the Public Service Law, 1967 (Law No. 33/67), void for illegality?

The salient facts of the case are:-

The appellants are a company limited. The respondent-plaintiff is a public officer holding the post of Senior Civil Engineer in the Water Development Department of the Republic. The respondent was married to the sister of the Managing Director of the appellants.

In November, 1979, the respondent agreed with the appellants to draw and prepare for them architectural drawings, specifications, etc., for the erection of a building in the touristic area of Paralimni at the agreed remuneration of 2 1/2% on the amount of the construction of the building and 2 1/2% for the supervision of the execution of the project. Drawings and specifications were prepared by the respondent; tenders were invited and a building contractor was awarded the contract at the agreed amount of £98,000.-.

The drawings and specifications, etc., were signed by P.W.2, Neophytos Demetriou, a Registered Civil Engineer under the Architects and Civil Engineers Law, for the purpose of submitting same to the appropriate authority for the issue of the relative building permit. The reason given by this witness is that, under the relevant Law, the respondent was not entitled to sign the said documents. In other words, this witness lent his signature to his friend, the respondent.

Due to family disputes the marriage of the respondent was disrupted and ultimately dissolved. Apparently due to these

family disputes the appellants engaged other architects, namely, David, Dikeos & Associates, for the supervision of the execution of the works. Nothing was paid to the respondent foi his agreed remuneration and he resorted to the District Court of Nicosia claiming £2,450.- agreed and/or reasonable remuneration foi services rendered, as aforesaid.

The appellants-defendants by their statement of defence contended that the contract was illegal and, consequently, void. The learned trial Judge held that the Public Service Law, No. 33/67, simply regulates the conditions of service of public servants. It does not restrict their right to private employment. Violation of s.64 gives rise only to a disciplinary offence. The contract was not vitiated with illegality. The trial Judge issued judgment for the respondent against the appellants for the amount claimed.

Section 64 of the Public Service Law reads as follows:-

"64. - (1) Save where express provision is made to the contrary in the terms of his appointment, the whole of the time of a public officer shall be at the disposal of the Republic.

(2) A public officer whose whole time is at the disposal of the Republic shall not practise any profession or trade or employ himself or participate in any occupation or business:

Provided that in exceptional circumstances and on the recommendation of the appropriate authority concerned, the Minister of Finance may grant permission to an officer for part-time employment or engagement so long as such employment or engagement does not either directly or indirectly interfere with the efficient performance of the public duties of the officer:

Provided further that any such permission may be subject to a condition that the whole or any part of any remuneration payable in respect of any such employment or engagement shall be paid into the public revenue."

Section 73(1)(b) and (2) of the same Law provides:-

"(1) A public officer is liable to disciplinary proceedings if -

(a) _____

(b) he commits an act or omission amounting to a contravention of any of the duties or obligations of a public officer.

(2) For the purposes of this section 'duties or obligations of a public officer' includes any duty or obligation imposed on a public officer under the law of the Republic or under this Law or any other law in force for the time being or under any public instrument made thereunder or under any order or direction issued."

Illegality of contracts is governed by s.23 of our Contract Law, Cap. 149, which reads:-

"23. The consideration or object of an agreement is lawful, unless -

(a) it is forbidden by law; or

(b) is of such a nature that, if permitted, it would defeat the provisions of any law; or

(c) is fraudulent; or

(d) involves or implies injury to the person or property of another; or

(e) the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

This is a replica of the same section in the Indian Contract Act. It purported to codify the Common Law on the subject of illegal contracts.

When the Common Law was introduced in this country by way of Codes - the Contract Law, 1930 (now Cap. 149), the Civil Wrongs Law, 1932 (now Cap. 148), the Criminal Code, 1928 (now Cap. 154) - in every one of the said Codes an identical provision was enacted for the interpretation of each Code in accordance with the principles of legal interpretation obtaining in England. In interpreting and applying these statutory provisions, however, we should not consider them as Procrustean beds.

In *Hji-Theodossiou v. Koullia & Another,* (1970) 1 C.L.R. 310, Vassiliades, P., in dealing with the Civil Wrongs Law, Cap. 148, and in this respect we cannot distinguish between the Contract Law and the Law of Civil Wrongs, at p. 323 said:-

> "These provisions originate and purport to codify the English Common Law regarding the tort of negligence. But here in Cyprus, being statutory provisions, they must be read, interpreted and applied in such a manner as to give effect to the will and intention of the legislator; same as all other statutory provisions are construed and applied by the Courts, in their function of fitting the law of the country to the living conditions therein; and of developing it under the accepted rules of construction, so as to keep pace, wherever possible, with the developing conditions in the particular field which the legislator intended to serve by making the statute; until such statutory provisions be amended or replaced by subsequent legislation. How similar statutory provisions are construed and applied in another jurisdiction, is extremely helpful to the Judge; *but he must never lose sight of the fact that the statutory provisions which he is called upon to construe and apply were made by the country's legislator with the object and intention of serving the people of this country; and they must, therefore, be construed and applied accordingly*".

On the interpretation of the aforesaid Codes see, inter alia, *Universal Advertising and Publishing Agency v. Panayiotis A. Vouros,* 19 C.L.R. 87, at p. 94; *Christos Marcou* v. *Gregoria Michael,* 19 C.L.R. 282; *Christodoulos Nicola Tseriotis v. Chryssi Christodoulou,* 19 C.L.R. 216; *The Queen v. Charalambos Herodotou,* 19 C.L.R. 144.

In *Protopapas v. Gunther & Another,* (1974) 12 J.S.C. 981, it was held that the rule in *Bain v. Fothergill* is not applicable in Cyprus. At p. 1006 I said:-

> "Laws are made for man and not man for laws. They are adapted to meet the variety of situation and circumstances in every day; they are developed so as to meet the needs of the people of this country. The introduction in our system of law of the exception of *Bain v. Fothergill* will create confusion and unnecessary litigation".

Having said the above on the interpretation of the Codes that introduced the Common Law in this country, it is observed that the phraseology of s.23 of the Contract Law is not happy. Be that as it may, we have to consider first whether the agreement is forbidden by Law.

Statutes often provide expressly for the civil consequences of breach of their provisions and this is by far the preferable solution.

The Animals Certificates Law, Cap. 29, s.7, reads:-

> "Irrespective of any proceedings which may be had or taken, a sale of any animal in contravention of the provisions of section 4 or 5 of this Law shall be *void* and of no effect."

That section came up for judicial consideration in *Loizos Chr. Kanaris v. Osman Tosoun,* (1969) 1 C.L.R. 637.

Where, however, a statute is silent as to the civil rights of the parties but penalizes the making or performance of the contract, the Courts consider whether the Law, on its construction, is intended to avoid contracts of the class to which the particular contract belongs or whether it merely prohibits the doing of some particular act - (*Archbolds (Freightage) Ltd. v. S. Spanglett Ltd., Randall (Third Party)*, [1961] 1 All E.R. 417).

In *Cope v. Rowlands,* 150 E.R. 707, the question arose whether a broker who was not admitted by the Court of Mayor and Alderment of the City for the time being could recover for work and labour and commission for buying and selling stock. By the 6 Anne, c.16, s.4, it was enacted, "That all brokers who shall act as brokers within the city of London and liberties thereof shall, from time to time, be admitted so to do by the Court of Mayor and Aldermen of the said city for the time being, under such restrictions and limitations for their honest and good behaviour as that Court shall think fit and reasonable; and shall, upon such their admission, pay to the Chamberlain of the said city for the time being, for the uses hereinafter mentioned, the sum of 40s., and shall also yearly pay to the said uses the sum of 40s. upon the 29th day of September in every year".

Parke, B., said at p. 710:-

> "It is perfectly settled, that where the contract which the

plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common or statute law, no court will lend its assistance to give it effect. It is equally clear that a contract is void if prohibited by a statute, though the statute inflicts a penalty only, because such a penalty implies a prohibition. And it may be safely laid down, notwithstanding some dicta apparently to the contrary, that if the contract be rendered illegal, it can make no difference, in point of law, whether the statute which makes it so has in view the protection of the revenue, or any other object. The sole question is, whether the statute means to prohibit the contract?"

And further down:-

"In order to decide this point, it is only necessary to look at the statute itself. If its object had been simply the pecuniary advantage of the Mayor and Corporation, it would have been wholly unnecessary to have made any provision for securing the good conduct of the persons admitted. The more that should be allowed to practise, the larger the revenue of the city; but the enactment, that all persons who should act as brokers should be admitted by the Court of Mayor and Aldermen under such restrictions and limitations for their honest and good behaviour as the Court should think fit and reasonable, shews clearly that the legislature had in view, as one object, the benefit and security of the public in those important transactions which are negotiated by brokers. The clause, therefore, which imposes a penalty, must be taken to imply a prohibition of all unadmitted persons to act as brokers, and consequently to prohibit, by necessary inference, all contracts which such persons make for compensation to themselves for so acting; and this is the contract on which this action (so far as it relates to brokerage) is brought".

In *Liverpool Borough Bank v. Turner* [1860] 30 L.J. Ch. 379, Lord Campbell, L.C., said in reference to statutory prohibitions:-

"No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of

justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed".

In that case, the Court, by a careful examination of the object of the Act and the public importance of compliance with it, held the transfer of a vessel to be a nullity for breach of a registration law.

In *Vita Food Products v. Unus Shipping Co.*, [1939] 1 All E.R. 513, Lord Wright said at p. 523:-

"Each case has to be considered on its merits. Nor must it be forgotten that the rule by which contracts not expressly forbidden by statute or declared to be void are in proper cases nullified for disobedience to a statute is a rule of public policy only, and public policy understood in a wider sense may at times be better served by refusing to nullify a bargain save on serious and sufficient grounds".

In *St. John Shipping Corpn. v. Joseph Rank, Ltd.*, [1956] 3 All E.R. 683, Devlin, J., as he then was, said at p. 687:-

"There are two general principles. The first is that a contract which is entered into with the object of committing an illegal act is unenforceable. The application of this principle depends on proof of the intent, at the time the contract was made, to break the law; if the intent is mutual the contract is not enforceable at all, and, if unilateral, it is unenforceable at the suit of the party who is proved to have it. This principle is not involved here. Whether or not the overloading was deliberate when it was done, there is no proof that it was contemplated when the contract of carriage was made. The second principle is that the court will not enforce a contract which is expressly or impliedly prohibited by statute. If the contract is of this class *it does not matter what the intent of the parties is; if* the statute prohibits the contract, it is unenforceable whether the parties meant to break the law or not. A significant distinction between the two classes is this. In the former class one has only to look and see what acts the statute prohibits; it does not matter whether or not it prohibits a contract; if a contract is deliberately made to do a prohibited act, that contract will be unenforceable. In the

latter class, one has to consider not what acts the statute prohibits, but what contracts it prohibits; but one is not concerned at all with the intent of the parties; if the parties enter into a prohibited contract, that contract is unenforceable".

The fundamental question is whether the statute means to prohibit the contract. The statute is to be construed in the ordinary way. One must have regard to all relevant considerations and no single consideration is conclusive.

Where the law does not expressly deprive the plaintiff of his civil remedies under the contract the appropriate question to ask is whether, having regard to the Law and the evils against which it was intended to guard and the circumstances in which the contract was made and to be performed, it would in fact be against public policy to enforce it - (*Shaw v. Groom,* [1970] 1 All E.R. 702).

"Public policy", in relation to this question, is that principle of the law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public, or against the public good, which may be termed, as it sometimes has been, the policy of the law, or public policy in relation to the administration of the law - (*Egerton v. Brownlow,* [1843-60] All E.R. Rep. 970, per Lord Truro at p. 995).

"Public policy" is an unruly horse, and dangerous to ride. No evidence is given in these public policy cases. The Court is to say, as matter of law, that the thing is against public policy, and void. The question whether a particular agreement is contrary to public policy is a question of law - (*Mogul Steamship Co. v. McGregor, Gow & Co.,* [1892] A.C. 25, H.L., at p. 45).

Judges are more to be trusted as interpreters of the law than as expounders of what is called public policy - (*In Re Mirams,* [1891] 1 K.B. 594)

In *Janson v Driefontein Consolidated Mines Ltd.,* [1902] A.C. 484, at p. 491 Lord Halsbury, L.C., said:-

"I deny that any Court can invent a new head of public policy".

It is doubted whether this dictum is consistent with the history of the law and with the trend of modern decisions.

Holmes, J., in *South Pacific Co. v. Jensen,* (1917) 244 U.S. 205, at p. 221 said:-

> "I recognise without hesitation that judges must and do legislate, but they do so only interstitially; they are confined from molar to molecular motions".

The fact that judges do make law has now been avowed by eminent writers. Sir Carleton Allen in "*Law in the Making*", p. 295, put the matter thus:-

> "The creative power of the courts is limited by existing legal material at their command. They find the material and shape it. The legislature may manufacture entirely new material".

This is approximately true, the only difficulty being the sense in which a judge may be said to use "existing legal material" when he decides a case purely out of a sense of justice.

Public policy is not to be identified with the policy of the government of the day. Public policy may change from generation to generation. The law relating to public policy must change with the passage of time, it cannot remain immutable.

The doctrine of "public policy" should be involved only in clear cases, in which the harm to the public is substantially incontestable and does not depend upon the idiosyncratic inferences of a few judicial minds - (*Fender v. Mildmay,* [1937] 3 All E.R. 402).

In *Halsbury's Laws of England,* 4th ed., vol 9, para. 392, the Law is stated thus:-

> "392. *Public policy.* Any agreement which tends to be injurious to the public or against the public good is invalidated on the grounds of public policy. The question whether a particular agreement is contrary to public policy is a question of law, to be determined like any other by the proper application of prior decisions. It has been indicated that new heads of public policy will not be invented by the courts for the following reasons: (1) judges are more to be trusted as interpreters of the law than as expounders of

public policy; and (2) it is important that the doctrine should only be invoked in clear cases in which the harm to the public is substantially incontestable. However, the application of any particular ground of public policy may well vary from time to time and the courts will not shrink from properly applying the principle of an existing ground to any new case that may arise. Conversely, many transactions are now upheld that in former times would have been considered against the policy of the law. The rule remains, but its application varies with the principles which for the time being guide public opinion. In fact, the adaptability of the rules of public policy derives in large part from the generality, and even ambiguity, with which those rules are expressed.

Public policy in this context must be distinguished from the policy of a particular government."

The task of the Court is to consider and interpret the particular statutory provision within the context of the law as a whole, the policy that it expresses, the evil that it intends to remedy, and reach a conclusion whether the Law intends to prohibit the contract. The second question is: If the agreement of the parties is enforced by the Court, would this defeat the provisions of s. 64 of Law 33/67? And the third question: Is the object of the agreement in this action opposed to public policy as expounded above? If the answer to one or more of the above questions is in the affirmative, then the consideration and/or object is unlawful and the agreement itself is void.

It was strenuously argued by counsel for the respondent that Law 33/67 is designed to regulate the terms and conditions of employment of public servants, establish a code for their behaviour and regulate matters pertaining to their status but leaves unaffected their contractual rights, and the contract in question is not unlawful on any of the grounds set out above.

With respect, the public service is a most important factor for the efficient functioning of the State. The interest of the citizens in a modern State, the activities of which are expanding, are best served by qualified, experienced, efficient and devoted public servants.

Section 64 is not concerned solely with the regulation of con-

ditions of employment in the public service. It prohibits public servants from engaging in any other work or business without the prior permission of the Minister of Finance. Such permission is only to be granted in exceptional cases. This provision is essential for the efficient administration of the public service and the successful performance of its mission. If they are free at the risk only of a small or any punishment for disciplinary offence to engage themselves in what the Law prohibits, naturally and inevitably their devotion to duty would diminish and their quality as civil servants would deteriorate at the expense of the public good. This would involve them in disputes with individuals to the disrepute of the service. The confidence of the public in the public service would be undermined.

As it emerges from the four corners of the Law and the provisions of s.64, the policy of the Law is to make the contract of service between a public servant and a third party unlawful, illegal and void. The Law prohibits the consideration of the agreement on which the respondent based his claim. To hold otherwise would be tantamount to go against the tide of public feeling in the country.

This contract is illegal as it infringes the provisions of s.64 of the Public Service Law, No. 33/67. It is illegal because it is forbidden by Law; it is illegal because, if permitted, it would defeat the provisions of the same Law; and it is illegal as opposed to public policy. Consequently, under the provisions of s. 23 of our Contract Law, Cap. 149, the consideration of the agreement of the litigants is unlawful. In view of the provisions of s. 10(1) and s.23 of our Contract Law, the agreement is void as the consideration is unlawful.

The policy of the Law for void agreements is rather punitive in nature. It is based on the ex turpi causa doctrine. The system of our Law adheres to the rule which denies a right of action when the parties are in pari delicto. An illegal contract is "void" but this term when applied to illegal contracts differs from the meaning propounded in our system of law to the same term when it appears in other context. A void contract is a non-existent contract and cannot, therefore, confer rights or create obligations. When the contract is void for illegality, recovery is precluded on the ground of ex turpi cause non oritur actio.

Some writers expressed the view that illegality merely renders a contract unenforceable, not totally void - (*R. M. Goode - Commercial Law,* (1982) p. 133).

Be that as it may, the Courts do not assist the person who relies on an illegal contract and they refuse to enforce it. The party who seeks redress in Courts relying on an illegal contract and unlawful consideration, is punished by the denial of a remedy on the ground of illegality. (*Holman v. Johnson* (1775) 1 Cowp., p. 343; *Scott v. Brown, Doering, McNab & Co.* [1892] 2 Q.B., p. 728; *North-Western Salt Co. Ltd. v. Electrolytic Alcalic Co. Ltd.* [1914] A.C. 461; *Snell v. Unity Finance Ltd.* [1963] 3 All E.R., p. 50). The fact that the result is harsh is, however, not in itself a decisive factor. In all cases of illegality, the Court is concerned not only with the normal process of finding a satisfactory adjustment of rights between the parties, but with promoting the public interest. If these two objectives conflict, the latter is generally regarded as the predominant one (Contract *and Crime by G. H. Treitel,* in *Crime, Proof & Punishment,* 1981, p. 97).

This function of the contract rules can give rise to two problems; Whether this deterrence is effective and whether it is excessive. In New Zealand the Illegal Contracts Act, 1970, s.7, gives the Court a broad discretion to grant relief in the case of an illegal contract by way of restitution, compensation, variation and even validation of the contract. For a critical discussion, see *Furmston,* "The Illegal Contracts Act 1970 - An English View", (1972) 5 N.Z. Univ. L. Rev. 151; the *Israeli Contract* Law (General Part) 1973, s. 31.

It is upon the legislature to consider any necessary amendments to our Contract Law. We would venture, however, to suggest that in the case of illegality for violation of s.64 of the Public Service Law the remuneration, which would have been payable to any public servant but for the illegality, be payable to the Republic, and the Minister of Finance to have a discretion whether any part thereof would be payable to the public servant.

The claim of the respondent might have been defeated if a further statutory illegality was pleaded, i.e. the provisions of the Architects & Civil Engineers Law, No. 41/62. Illegality,

however, has to be pleaded, and since this point was not raised, we need not deal with the matter.

In view of the above the appeal succeeds. The judgment of the Court is set aside but in all the circumstances of the case, as the appellants have benefited by the illegality of which they had knowledge, we make no order as to costs either before this Court or in the Court below.

Appeal allowed. Order for costs as above.