1984 March 21

[HADJIANASTASSIOU, A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, PIKIS, JJ.]

THE PRESIDENT OF THE REPUBLIC,

Appellant,

v.

YIANNAKIS LOUCA AND OTHERS,

Respondents.

(*Consolidated Revisional Jurisdiction Appeals Nos.* 323, 324, 325 and 326).

Practice—Recourse for annulment—And appeal against judgment given in such a recourse—Withdrawal—Principles applicable—No leave of the Court required—Recourse against termination of services as members of Public Service Commission—Acceptance of compensation by way of damages sustained from sub judice decision—Such acceptance deprives applicants of legitimate interest to pursue their recourse—Entitled to withdraw them.

Yiannakis Louca and Antonios Anastassiou ("the respondents") were appointed as members of the Public Service Commission for a six-year period; but before the expiration of their term the President of the Republic terminated their services. The respondents challenged the termination of their services by means of recourses and the trial Judge having resolved certain issues by his judgment held back a final decision in expectation of the judgment on appeal that he anticipated on the issues resolved by his judgment. As against the above judgment an appeal was filed by the Attorney-General on behalf of the Republic and a cross-appeal was filed by one of the respondents.

In the course of the hearing of the appeal and cross-appeal Counsel for the parties made a statement to the effect that the appellants abandon or discontinue their appeals and the cross-appeal; and the two respondents in person asked to withdraw their recourses. This decision was reached as a result of an

overall settlement of the relevant recourses by means of which the respondents were expected to withdraw them having been apparently duly compensated

On the question whether an appeal could be withdrawn or abandoned without the leave of the Court or only with such leave as a matter of discretion possessed by it under the relevant Rules of Court and on the question whether a recourse filed under Article 146 *of the Constitution could be withdrawn, discontinued or abandoned as of right by a litigant or whether that could be done only with the leave of the Court:*

Held, Pikis, J. dissenting, that given that there must exist interest as a prerequisite to the admissibility of an application for annulment, it has to be accepted that as from the moment the applicant who seeks the annulment declares that he has no interest for his application to be tried, there does not exist any longer this formal prerequisite, inasmuch as he who is not deprived of his ability to appear in Court is the most suitable de juris e de jure judge of his own interest; that on account of this the abandonment of the already exercised judicial measure of application for annulment is acceptable; that further acceptance of an administrative act deprives acceptor of the legitimate interest to pursue a recourse; that the respondents by their statement have to be considered as having been deprived of any legitimate interest in the matter once they have accepted unreservedly compensation by way of damages they have sustained from the sub judice decision; accordingly the respondents are entitled to withdraw their recourses and the appellants and cross-appellants to withdraw their appeals and cross-appeals.

Order accordingly.

Cases referred to:

Papasavvas v. *Republic* (1967) 3 C.L.R. 111;

Christofis v. *Republic* (1970) 3 C.L.R. 97;

Tomboli v. *CY.T.A.* (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149;

Myrianthis v. *Republic* (1977) 3 C.L.R. 165;

Louca v. *President of the Republic* (1982) 3 C.L.R. 905;

Republic v. *Georghiades* (1972) 3 C.L.R. 594 at p. 690;

Kazamias v. *Republic* (1982) 3 C.L.R. 239 at p. 301;

Louca v. *President of the Republic* (1983) 3 C.L.R. 783 at pp. 791, 792;

Christou v. *Republic* (1982) 3 C.L.R. 634 at p. 639;

Branco Salvage Ltd. v. *Republic* (1967) 3 C.L.R. 213;

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

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

Holy See of Kitium v. *Municipal Council of Limassol*, 1 R.S.C.C. 15 at p. 21;

Kyriakides v. *Republic*, 1 R.S.C.C. 66 at p. 69;

Pikis v. *Republic* (1968) 3 C.L.R. 303 at pp. 305–306;

Papadopoulos v. *Republic* (1970) 3 C.L.R. 169 at p. 173;

Republic v. *Pericleous* (1972) 3 C.L.R. 63 at p. 68;

Constantinides v. *Republic* (1969) 3 C.L.R. 523 at p. 530;

Nissis (No. 2) v. *Republic* (1967) 3 C.L.R. 671;

Cyprian Seaway Agencies Ltd. and Others v. *Republic* (1981) 3 C.L.R. 271;

Hadjianastassiou v. *Republic* (1983) 3 C.L.R. 1173;

Hess v. *Labouchers*, 14 T.L.R. 350;

Fox v. *Star Newspaper Co.* [1899] 69 L.J. Q.B. 117;

Tsirou v. *Shitta* (1974) 6 J.S.C. 753;

Heatley v. *Barnard* (Weekly Notes 1890, p. 130);

Lees v. *Motor Insurers' Bureau* [1953] 1 W.L.R. 620;

Lindsay Parkinson Ltd. v. *Tripton Ltd.* [1973] 2 All E.R. 273 at p. 285;

Castanho v. *Brown* & Roots (U.K.) Ltd. [1981] 1 All E.R. 143;

Aloupas v. *National Bank of Greece* (1983) 1 C.L.R. 55.

Appeals and cross-appeals.

Appeals and cross-appeals against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 21st May, 1983 (Revisional Jurisdiction Case No. 32/82)* whereby it was decided that the termination of the services of the respondent as a member of the Public Service Commission could not be treated as being an act of Government.

Cl. Antoniades, Senior Counsel of the Republic, for appellants in Appeal Nos. 325, 326.

X. Xenopoullos, for appellants-interested parties in Appeals 323, 324.

E. Efstathiou with *P. Demetriades*, for respondents in Appeals 323 and 326 and for cross-appellant in appeal 326.

T. Papadopoullos, for respondents in Appeals 324 and 325.

Cur. adv. vult.

The following judgments were read:

HADJIANASTASSIOU J.: Counsel for the appellants and the respondents (applicants in the recourses) informed the Court of their wish to abandon both the appeal and the cross-appeal and sought our leave for the purpose. Indeed, both respondents stated categorically in Court that their own wish was to withdraw and abandon the two recourses because they have been offered compensation by the Government for the damage they have sustained on account of the sub judice act. The question that arises is whether this Court is vested with power to allow them to withdraw the recourses, the appeal and the cross-appeal.

In Greece, according to Professor Tsatsos, the position is stated as follows at p. 368 of his textbook "Recourse for Annulment" 3rd edn:

"185. Τὸ δικαίωμα τῆς παραιτήσεως ἀπὸ τῆς ὑποβληθείσης αἰτήσεως ἀκυρώσεως δὲν ἔχει θεσπισθῆ διὰ τοῦ νόμου. Δοθέντος ὅμως, ὅτι ἀπαιτεῖται ἡ παρουσία συμφέροντος ὡς προϋπόθεσις τῆς παραδοχῆς τῆς αἰτήσεως ἀκυρώσεως, δέον νὰ γίνῃ δεκτὸν ὅτι, ἀφ' ἧς στιγμῆς ὁ αἰτούμενος τὴν ἀκύρωσιν

* Reported in (1983) 3 C.L.R. 783

δηλώσει ὅτι δὲν ἔχει συμφέρον νὰ ἐκδικασθῇ ἡ αἴτησις αὐτοῦ, δὲν ὑφίσταται πλέον ἡ τυπικὴ αὕτη προϋπόθεσις, καθ' ὅσον ὁ μὴ στερούμενος τῆς ἱκανότητας τῆς ἐπὶ δικαστηρίου παραστάσεως εἶναι ὁ ἁρμοδιώτερος de juris e de jure κριτὴς τοῦ ἰδίου συμφέροντος .Τούτου ἕνεκεν ἡ παραίτησις ἀπὸ τοῦ ἀσκηθέντος ἐνδίκου μέσου τῆς αἰτήσεως ἀκυρώσεως εἶναι δεκτὴ".

("185. The right of abandonment of a filed recourse for annulment has not been enacted by law. But given that the presence of interest is required as a prerequisite for the acceptance of the application for annulment, it must be accepted that, from the moment the person praying for the annulment declares that he has no interest in having his application tried, there does not exist any more this formal prerequisite, since the person who is not deprived of the ability to appear before the Court is the more appropriate de juris e de jure Judge of his own interest. This being so the withdrawal of the already exercised legal measure of the application for annulment is acceptable").

Further the statement in the above textbook concerning the existence of legitimate interest is in line with the principles enunciated by our case law (see *Papasavas v. Republic*, (1967) 3 C.L.R. 111, *Christofis v. Republic*, (1970) 3 C.L.R. 97) which are to the effect that such interest must continue to subsist at the date of hearing of the recourse. Further it has been established by our case law relying in this respect on relevant case law in Greece, that acceptance of an administrative act deprives acceptor of the legitimate interest to pursue a recourse. (See *Tomboli v. CY.T.A.*, (1980) 3 C.L.R. 266, *Myrianthis v. Republic*, (1977) 3 C.L.R. 165). Since in the instant cases the step taken by respondents in pursuance of withdrawal of the recourses arose because the Republic has offered - and they have accepted compensation - by way of damages they have sustained from the sub judice acts, such acceptance deprives them of the legitimate interest to pursue a recourse.

In the light of those weighty statements by Professor Tsatsos, I have reached the conclusion to adopt and apply them in the cases in hand and I hold that the parties can withdraw their respective proceedings. Accordingly, the appeals, the cross-appeals and the recourses, having been withdrawn, are struck out.

Finally, I would like to add that having regard to the statements by both counsel for the appellant and respondent that they withdraw the appeals and the cross-appeals I find myself in agreement with such a stand which is in the interest of everyone and I repeat that both respondents are entitled to withdraw their two recourses.

A. Loizou J.: Applicant Yiannakis Louca (hereinafter to be referred to as the first applicant) was on the 4th November, 1960, appointed as a member of the Public Service Commission which was then established under Article 124 of the Constitution and since then his appointment was renewed, the last appointment having been made by the President of the Republic on the 20th June, 1979, for a six year period commencing the 1st July, 1979, and ending the 30th June, 1985.

Applicant Anastassiou (hereinafter to be referred to as the second applicant) was appointed by the President of the Republic as a member of the Public Service Commission on the 20th June, 1979, for a six year period commencing also on the 1st July, 1979. Both applicants were on the 15th January, 1982, called to the Presidential Palace and (without myself referring to what transpired between them and the President of the Republic, with which we are not concerned at this stage), were handed identical letters bearing that date, signed by the President of the Republic, and which read as follows:-

> "I inform you by this letter that by vistue of Section 4, subsection 3, of the Public Service Law of 1967, I terminate your appointment as a member of the Public Service Commission as from 18th January, 1982.
>
> I take occasion to express thanks for the services you have rendered".

Two new members were then appointed in their place, namely, Mr. Yiannakis D. Serghides, who has since then resigned, and Christakis P. Hadjiprodromou, who is still a member.

The two applicants filed their respective recourses challenging the validity of the aforesaid decision of termination of their services on a number of grounds including the unconstitutionality of section 4, subsection 3, of The Public Service Law, 1967 (Law No. 33 of 1967) as offending Article 124 and in particular

paragraph 5 thereof, read in conjunction with Article 47, paragraph (f) of the Constitution and Article 53, paragraphs 7 and 8 of the Constitution. The validity of the appointment of the new members (hereinafter to be referred to as the interested parties) was also challenged.

In the oppositions filed on behalf of the respondent, the termination of the appointment of the first applicant was, inter alia, sought to be justified (para. 3 thereof) that he was engaged in business contrary to section 8 of the Public Service Law, 1967 and that it was in the public interest to terminate his appointment. No such ground is relied upon in the opposition of the respondent as regards the second applicant.

On the 1st September, 1982, an interim judgment was given (see *Louca* v. *The President of the Republic* (1982) 3 C.L.R. 905). The learned President who was trying these Recourses having considered carefully all the material before him found that in fairness to them he should give to counsel for the parties the opportunity to advance further arguments on five issues which he set out therein and in the light of which he reopened the hearing of the case. Arguments were then heard from all parties and on the 21st May, 1983, he gave the present judgment which is the subject of Revisional Jurisdiction Appeals Nos. 326 and 325 filed on behalf of the President of the Republic, and Revisional Jurisdiction Appeals Nos. 323 and 324, filed on behalf of the interested parties, and the subject of a cross-appeal filed on behalf of the first applicant.

These appeals and cross-appeals were by direction of this Court heard together sitting on appeal from a judgment of a Judge of this Court and exercising its revisional jurisdiction under section 11 of the Courts of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964).

In the course of the hearing and before its conclusion counsel for the appellants and counsel for cross-appellant Louca, made a statement to the effect that the appellants abandon or discontinue their appeals and the cross-appeal, respectively. Furthermore, the two applicants in person asked to withdraw their recourses. This position was reached as a result of an overall settlement of the relevant recourses and that the applicants were

expected to withdraw them having been apparently duly compensated.

The question then arose whether an appeal can be withdrawn or abandoned without the leave of the Court or only with such leave as a matter of discretion possessed by it under the relevant Rules of Court to which I shall be shortly referring and whether a recourse filed under Article 146 of the Constitution could be withdrawn, discontinued or abandoned as of right by a litigant or whether that could be done only with the leave of the Court.

Relevant to this issue is the fact that by the judgment appealed from no conclusion was reached, it was in other words an interim judgment in view of its concluding paragraph which reads as follows:

> "I shall, therefore, allow this case to remain pending for the period during which an appeal can be made against this judgment by any party to these proceedings and if such an appeal is made, I shall await the outcome of the appeal. If no appeal is made I shall then proceed to decide finally about the outcome of this case by dealing, also, inter alia, with the aforementioned issues (3) and (5)".

Paragraph 3, mentioned hereinabove dealt with the question whether, assuming that a contravention of section 8 of Law 33 of 1967 comes within the notion of public interest in section 4(3) thereof, the services of a member of the Public Service Commission could be terminated by the President of the Republic for such a contravention without the member concerned being given the opportunity to refute the accusations against him in this connection. And paragraph 5 posed the question that assuming that the services of the applicant were wrongly terminated did he (the trial Judge) have to terminate the appointments of both interested parties or one of them and in such a case of whom.

Counsel for the second applicant has contended that as far as his client was concerned neither of the two issues arose inasmuch as it was never contended on behalf of the President of the Republic that the termination of his services from the Public Service Commission was based on the provisions of section 8 of the Public Service Law, 1967.

It may, however, be observed that there was no final order made in respect of the recourse of this applicant, either by dismissing his recourse or annulling the sub judice decision. Therefore, to my mind, for all intents and purposes, the proceedings had not procedurally come to an end and the learned President had said so clearly in the passage herein above quoted that he would allow the case to remain pending and proceed to decide finally after the appeal is determined or the lapse of time for filing an appeal if no appeal is made.

Upon the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964), a new situation was created as regards the revisional jurisdiction of the Supreme Court exercised under Article 146 of the Constitution. Any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority as being contrary to the law in force or in excess or abuse of power, could, by virtue of section 11(2) of the said law, be exercised subject to any Rules of Court by any Judge or Judges as the Court shall determine. Provided that subject to any Rules of Court there was given the right of an appeal to the Full Bench from his or their decision. As I had occasion to say in the case of the *Republic v. Lefkos Georghiades* (1972) 3 C.L.R., p. 594, at p. 690:

> "This Court when hearing an appeal from a judgment of one of its members, approaches the matter as a complete re-examination of the case, with due regard to the issues raised by the parties on appeal, or to the extent that they have been left undetermined by the trial Judge or in case of a successful appeal in addition to the above, to the extent of the cross-appeal".

The subject, therefore, of a revisional appeal continues to be the validity of the administrative position challenged by the recourse. The exercise of this jurisdiction is governed by the general principles of Administrative Law and Rules of Court, namely, the Supreme Constitutional Court Rules, 1962 and the Supreme Court (Revisional Jurisdiction) Appeal Rules of 1964, which latter rules were made by virtue of the provisions of section 17 of Law 33 of 1964 to meet the new situation created by the said law

as regards appeals to the Full Bench. Rule 18 of the Suprme Constitutional Court Rules provides:-

> "The Civil Procedure Rules in force in the Republic on the date of the making of these Rules shall apply, mutatis mutandis, to all proceedings before the Court so far as circumstances permit or unless other provision has been made by these Rules or unless the Court or any Judge otherwise directs".

Rule 3 of the Supreme Court (Revisional Jurisdiction) Appeal Rules of 1964, provides:

> "The provisions of Order 35 of the Civil Procedure Rules relating to appeals shall apply, mutatis mutandis, to an appeal from a decision of a Judge or Judges exercising revisional jurisdiction under subsection 2 of section 11 of the law."

Order 35, rule 29(3) of the Civil Procedure Rules, which is the one relevant in this issue, reads as follows:-

> "If after an appeal is fixed for hearing the appellant wishes to abandon his appeal he may do so by giving notice in writing to the respondent and to the said Registrar, and a Judge of the Court may strike out the appeal on such terms as he thinks fit. The provisions of paragraph (2) of this rule in regard to notice under rule 10 of this Order shall apply."

I do not intend to examine these Civil Procedure Rules and the way they have been interpreted and applied as regards civil appeals and civil proceedings as to the extent that they can be invoked in revisional jurisdiction recourses and appeals, they have to be applied within the context of the General Principles of Administrative Law and one of the fundamental prerequisites for the filing of such recourse is the existence of a legitimate interest which must continue to subsist at the date of the hearing of a recourse or at that of a revisional appeal. The acceptance of an administrative act or decision deprives the person affected thereby of his legitimate interest to pursue a recourse. If any authority is needed for this proposition reference may be made to the case of *Maria Tomboli v. The Cyprus Telecommunications Authority* (1982) 3 C.L.R., p. 149, in which the Full Bench of

this Court reviewed the authorities and dealt with the legal principles governing same.

As pointed out by Professor Tsatsos in his text-book "Recourse for Annulment", 3rd Ed., at p. 368, para. 185, relying on decided cases of the Greek Council of State:

> "The right of abandonment (παραίτησις) of an application for annulment filed is not prescribed by statute law. Given, however, that there must exist interest as a prerequisite to the admissibility of an application for annulment, it has to be accepted that as from the moment the applicant who seeks the annulment declares that he has no interest for his application to be tried, there does not exist any longer this formal prerequisite, inasmuch as he who is not deprived of his ability to appear in Court is the most suitable de juris e de jure judge of his own interest. On account of this the abandonment of the already exercised judicial measure of application for annulment is acceptable. (See Decisions of the Greek Council of State Nos. 186/30, 367/30, 825/30, 211/31, 352/36, 353/36, 115/37, 72/43, 26/44, 470/46, 2025/52).
>
> The statement of resignation may be made even during the hearing of the case (see Decisions of the Greek Council of State Nos. 186/38, 367/30, 725/30, 2025/52).
>
> When, however, the hearing of the case is over, it is unacceptable since upon the conclusion of the hearing the right of the litigant to address the Court stops (see Decision of the Greek Council of State No. 620/51)".

In the present case the two applicants by their statements have to be considered as having no legitimate interest in the matter once they accepted unreservedly (and on the contrary they accepted with an undertaking to withdraw their respective recourses) compensation.

Before concluding and in view of the importance of the issue of the constitutionality of subsection 3 of section 4 of the Public Service Law 1967, and of the fact that same refers to the powers of the President of the Republic to terminate in the public interest the services of the Chairman or any Member of the Public Service Commission, the whole matter should be reconsidered

by the Appropriate Organs of the Republic in the light of the provisions of Article 124, para. 5, of the Constitution which provides "a Member of the Commission shall not be removed from office, except on the like grounds and in the like manner as a Judge of the High Court", and in the light of Article 47, para. (f) and Article 153, paras. 7 and 8 of the Constitution.

For all the above reasons, I have come to the conclusion that the appeals and cross-appeal should be dismissed and the recourses struck out as having been deprived of their subject matter.

SAVVIDES J.: The present appeals (four in number) and cross-appeals in Revisional Appeals 323 & 326, which by directions of this Court were heard together as presenting common questions of law, are directed against the judgment of the President of this Court sitting in the first instance, in Cases 32/82 & 133/82 in which the validity of the decisions of the President of the Republic to terminate the appointment of two members of the Public Service Commission and to replace them by two others were in issue.

The two applicants were members of the Public Service Commission and their services were terminated by the President of the Republic before the expiration of their term of office. As a result, they filed cases 32/82 and 133/82 challenging the decisions of the President of the Republic to terminate their services as from January 18th, 1982 as members of the Public Service Commission and also to appoint as members of the said Commission Yiannis Serghides and Christakis HadjiProdromou, who were the interested parties in such cases.

The Public Service Commission was established under Article 124 of the Constitution to discharge the functions set out in Article 125.1 of the Constitution which reads as follows:

> "1. Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

Due to the importance of the functions of the Public Service Commission and to secure their impartiality and independence from governmental influence, the holding of office by its members was safeguarded for the duration of their term of office by paragraph 5 of Article 124 of the Constitution which provides that:

> "A member of the Commission shall not be removed from office except on the like grounds and in the like manner as a judge of the High Court."

In *Kazamias* v. *The Republic* (1982) 3 C.L.R. 239, at p. 301, in dealing with the object of Article 125.1 of the Constitution, I said:

> "The object of the introduction in our Constitution of Article 125.1, as already explained, was to entrust the safeguarding of the efficiency and proper functioning of the public service of the Republic, expressly including the exercise of disciplinary control over public officers, to the Public Service Commission, an independent and impartial organ outside the governmental machinery, and, at the same time, safeguarding the protection of the legitimate interests of public officers."

The power to appoint a member of the Public Service Commission was vested in the President and Vice-President of the Republic by Article 47(f) of the Constitution. As a result of the intercommunal troubles and the non participation of the Turkish members of the Public Service Commission in such Commission, and the fact that its functioning in the composition provided by Article 124 of the Constitution could not be carried out, the power to appoint the members of the Public Service Commision became vested in the President of the Republic under section 4(1) of Law 33/67. By the same Law, the number of its members was reduced to 5 (one Chairman and 4 members) and their term of office, subject to renewal, was fixed at 6 years (which was in line with the period provided by Article 124 of the Constitution). Under section 4(3) of Law 33/67 the President of the Republic may at any time terminate the appointment of the Chairman or of any other members of the Commission if he considers it to be in the public interest.

Yiannakis Louca, applicant in Case 32/83 and respondent in Revisional Appeals 323, 326 was appointed as a member of the

Public Service Commission on 4.11.1960 for six years and his appointment was renewed ever since, the last of which was made on 1.7.79, ending on 30.6.85. Antonakis Anastassiou, applicant in Case 133/82 and respondent in Revisional Appeals 324, 325 was appointed as a member of the Public Service Commission on 20.6.79 for six years commencing on 1.7 79 and ending on 30.6.85. On 15.1.82 the term of office of the two applicants was terminated by a letter signed by the President of the Republic by which they were informed that, by virtue of section 4(3) of the Public Service Law, 1967, their appointment as members of the Public Service Commission was terminated as from 18.1.82.

The legality of such decision was the subject matter of the two recourses filed by the applicants in which one of the issues was the constitutionality of section 4(3) of Law 33/67 under which the purported termination of services was effected.

The learned President of this Court after he heard arguments by counsel on both sides in Case 32/82, decided, on the 1st September 1982, to re-open the hearing of the case and hear further argument on five issues formulated by him in the said decision (see *Louca* v. *The President of the Republic* (1982) 3 C.L.R. 905). The reasons for having so decided, as reported at pp. 912 and 913, read as follows:

> "Having considred carefully all the material at present before me I find that in fairness to them I should give to counsel for the parties the opportunity to advance further arguments on the following issues:
>
> (1) Since no specific provision is made in Law 33/67 about the termination of the services of a member of the Public Service Commission on the ground of misconduct, such as a contravention of section 8 of Law 33/67, could it have been the intention of the Legislature that in this respect paragraph 5 of Article 124 of the Constitution was to continue to be operative or is such misconduct to be treated as a matter of public interest in the sense of section 4(3) of Law 33/67.
>
> (2) Assuming that paragraph 5 of Article 124 of the Constitution has, in effect, been substituted by section 4(3) of Law 33/67, was such a course justifiable on the basis of the 'Law of necessity' which led to the setting up, under Law 33/67, of a new Public Service Commission.

(3) Assuming that a contravention of section 8 of Law 33/67 comes within the notion of public interest in section 4(3) of the same Law, can the services of a member of the Public Service Commission be terminated by the President of the Republic for such a contravention without the member concerned - in this instance the applicant - being given, in accordance with the rules of natural justice, an opportunity to refute the accusations against him in this connection.

(4) Is the termination of the services of a member of the Public Service Commission under section 4(3) of Law 33/67 for a contravention of section 8 of the same Law an 'act of Government' outside the ambit of the jurisdiction of Article 146 of the Constitution, even assuming that otherwise the termination of the services of a member of the Public Service Commission, under the said section 4(3), in the public interest, for a reason other than contravention of section 8, could be found to be an 'act of Government'.

(5) Assuming that I find that the services of the applicant were wrongly terminated do I have to terminate the appointments of both interested parties or of one of them, and in such a case of whom.

In the light of the foregoing I reopen the hearing of this case accordingly."

Arguments were subsequently heard from counsel of all parties and on 21.5.83 the learned President of this Court gave an interim judgment (see *Louca* v. *The President of the Republic* (1983) 3 C.L.R. 783) which concluded as follows: (see pp. 791, 792 of the report):

"Having disposed of, on the basis of what have already been stated in this judgment, of issues (1), (2) and (4) which were raised by the interim judgment of 1st September 1982, I have decided not to deal as yet with issues (3) and (5) which were, also, raised by the said interim judgment, because, such issues relate to matters in respect of which it would not be necessary, or even proper, for me to reach a decision if either I do not possess jurisdiction to entertain this recourse under Article 146 of the Constitution because, contrary to what I have found in this judgment, the termi-

nation of the services of the applicant in the present instance is an 'act of Government', or because such termination, again contrary to what I have held in this judgment, could not have been validly effected at all under section 4(3) of Law 33/67 but only in the manner prescribed by Article 124.5 of the Constitution.

I shall, therefore, allow this case to remain pending for the period during which an appeal can be made against this judgment by any party to these proceedings and if such an appeal is made I shall await the outcome of the appeal. If no appeal is made I shall then proceed to decide finally about the outcome of this case by dealing, also, inter alia, with the aforementioned issues (3) and (5)."

On the same date an interim judgment was also delivered in Case 133/82 adopting the reasons given in Case 32/82 and embodying the same directions as to the adjournment of the further hearing of the case on its merits, pending the expiration of the period during which an appeal could be made and in case of an appeal, pending the outcome of such appeal.

Against such judgments the present Revisional Appeals were filed as follows: R.A. 323 and 324 on behalf of the interested parties, R.A. 325 and 326 on behalf of the President of the Republic and cross-appeals in R.A. 323 and 326 by the respondent in such appeals, Yiannakis Louca.

In the course of the hearing of these appeals and cross-appeals and before the hearing was concluded, counsel for the appellants and cross-appellant informed the Court of their intention to abandon the appeals and the cross-appeals in view of an overall settlement reached. Furthermore, the two applicants stated in Court that they did not wish to pursue their recourses any further and asked to withdraw same. As a result a question arose as to whether leave from the Court is required for the withdrawal of the appeals, the cross-appeals and the recourses, on which counsel were invited to address the Court.

The right of abandonment of a recourse according to the principles of the Greek Administrative Law as expounded by Professor Tsatsos in his text-book "Recourse for Annulment", 3rd Ed., relying on the jurisprudence emanating from the de-

cisions of the Greek Council of State, is described as follows at p. 368:

"185.–Τὸ δικαίωμα τῆς παραιτήσεως ἀπὸ τῆς ὑποβληθείσης αἰτήσεως ἀκυρώσεως δὲν ἔχει θεσπισθῆ διὰ τοῦ νόμου. Δοθέντος ὅμως, ὅτι ἀπαιτεῖται ἡ παρουσία συμφέροντος ὡς προϋπόθεσις τῆς παραδοχῆς τῆς αἰτήσεως ἀκυρώσεως, δέον νὰ γίνῃ δεκτὸν ὅτι, ἀφ' ἧς στιγμῆς ὁ αἰτούμενος τὴν ἀκύρωσιν δηλώσει ὅτι δὲν ἔχει συμφέρον νὰ ἐκδικασθῆ ἡ αἴτησις αὐτοῦ, δὲν ὑφίσταται πλέον ἡ τυπικὴ αὕτη προϋπόθεσις, καθ' ὅσον ὁ μὴ στερούμενος τῆς ἱκανότητος τῆς ἐπὶ δικαστηρίου παραστάσεως εἶναι ὁ ἁρμοδιώτερος de juris e de jure κριτὴς τοῦ ἰδίου συμφέροντος. Τούτου ἕνεκεν ἡ παραίτησις ἀπὸ τοῦ ἀσκηθέντος ἤδη ἐνδίκου μέσου τῆς αἰτήσεως ἀκυρώσεως εἶναι δεκτή.

Ἡ περὶ παραιτήσεως δήλωσις δύναται νὰ ὑποβληθῆ καὶ διαρκούσης ἔτι τῆς συζητήσεως τῆς ὑποθέσεως ...".

("185. The right of abandonment of a filed recourse for annulment has not been enacted by law. But given that the presence of interest is required as a prerequisite for the acceptance of the application for annulment, it must be accepted that, from the moment the person praying for the annulment declares that he has no interest in having his application tried, there does not exist any more this formal prerequisite, since the person who is not deprived of the ability to appear before the Court is the more appropriate de juris e de jure Judge of his own interest. This being so the withdrawal of the already exercised legal measure of the application for annulment is acceptable.

The statement about the abandonment may be submitted even during the trial of the case .....").

It is clear from the above that the applicant in a recourse both prior to the hearing or in the course of the hearing is entitled to abandon his recourse and divest himself of any legitimate interest entitling him to pursue his recourse upto the end. As rightly described in the above extract he is the most competent de juris e de jure judge of his own interest.

I fully agree with the opinion expressed by my learned brother Judges Hadjianastassiou and Loizou, based on the relevant case

law of this Court and the jurisprudence of the Greek Council of State that the two applicants by their statements have to be considered as having been deprived of any legitimate interest in the matter once they have accepted unreservedly compensation by way of damages they have sustained from the sub judice decision. It is well settled that legitimate interest must continue to subsist at the date of the hearing of the recourse (*Papasavvas v. The Republic* (1967) 3 C.L.R. 111, *Christofis v. The Republic* (1970) 3 C.L.R. 97).

I have already described the judgment under appeal as an interim judgment and not a final judgment in the first instance. This is clear from the contents of such judgment to which reference has already been made whereby there is no final conclusion but the cases were allowed to remain pending until determination of an appeal and their final outcome would be considered after the determination of the appeal. I wish further to add that it is well settled that when the Full Bench of the Supreme Court is seized of a revisional appeal, the proceedings are to be regarded "as a continuation before it of the proceedings in the recourse concerned which took place, in the first instance, before a judge of the Court; and what, in essence, continues to be in issue at the stage of the revisional jurisdiction appeal is still the validity of the subject-matter of the particular recourse in which the appealed from judgment has been given" (*Christou and others* v. *The Republic* (1982) 3 C.L.R. 634 at p. 639. See also *The Republic* v. *Lefkos Georghiades* (1972) 3 C.L.R. 594 at p. 690).

I have, therefore, come to the conclusion that the applicants are entitled to withdraw their recourses and the appellants and cross-appellants to withdraw their appeals and cross-appeals.

Before concluding I wish to add that I share the view expressed by my learned brother Judge A. Loizou, that in view of the important constitutional issues which have been raised by these recourses and have been argued before us on appeal, and in particular the issue touching the constitutionality of sub-section (3) of section 4 of Law 33/67 in the light of the provisions of Article 124.5 of the Constitution, the position should be reconsidered by the Appropriate Organs of the Republic so that the independency and impartiality of the Public Service Commission which I stressed in the *Kazamias* case is safeguarded.

For all the above reasons, I have come to the conclusion that the appeals and cross-appeals should be dismissed and the recourses struck out.

LORIS J.: In the course of the hearing of the present appeals and the cross-appeal in Revisional Appeal 325 (which were being heard together) learned counsel for all appellants made a statement to the effect that they were abandoning their respective appeals.

Learned counsel appearing for respondent—cross-appellant in R.A. 325 stated, inter alia, that "It was within the discretion of the Court to allow such an abandonment; if leave were to be granted for such an withdrawal-abandonment, he concluded, he would likewise withdraw his cross-appeal". Learned counsel appearing for respondent in R.A. 326 confined himself in saying that having no cross-appeal he would be satisfied with the withdrawal of the appeal against his client.

At this stage counsel for appellants in R.A. 323 and 324 stated that the abandonment of the appeals was the result of an overall settlement of the substance of the relevant recourses and that the applicants in the aforesaid recourses, notably respondents in R.A. 325 and R.A. 326 were expected to withdraw their recourses as well; this stand of the aforesaid counsel was adopted by counsel appearing for the Republic in R.A. 325 and R.A. 326.

This firm demand of counsel for appellants was met in a somewhat confused way by counsel appearing for the respondents: both counsel for the respondents stated before us that in spite of the fact that they themselves had the view that their clients could not and should not withdraw their respective recourses, yet their clients wished to withdraw same.

The clients in question, who were present, on being asked by Court to express their wishes as to the fate of their respective recourses replied as follows:

A. Anastassiou: Ζητῶ νὰ τὴν ἀποσύρω.

Y. Louca: Ἐπιθυμῶ ὅπως τὴν ἀποσύρω.

It was submitted by learned counsel appearing for respondent in R.A. 326 that his client could not withdraw his recourse as

in his opinion the case in respect of his client before the trial Court was already concluded.

Learned counsel for respondent in R.A. 325 submitted that although the case in respect of his client was still incomplete in the trial Court and "τυπικώς" his client is entitled to withdraw his recourse yet as the case involves serious constitutional issues this Court should proceed to pronounce on the merits refusing leave to withdraw the recourse.

As both counsel of respondents in R.A. 325 and 326 referred to the "Judgment" of the trial Court I feel duty bound to examine very briefly the judgment in question:

It is abundantly clear from the record of R.A. 326 (80–88) that the learned President of this Court after ruling in an interim decision given on 1.9.1982 invited further argument on five preliminary points. On 21.5.1983 he gave his decision on three out of the said five points directing at the same time as follows:

> "....I shall, therefore, allow this case to remain pending for the period during which an appeal can be made against the decision by any party to these proceedings and if such an appeal is made I shall await the outcome of the appeal. If no appeal is made I shall then proceed to decide finally about the outcome of this case dealing also, inter alia, with the aforementioned issues (3) and (5)".

It is abundantly clear to my mind taking into consideration the aforesaid decision as a whole and in particular the passage quoted above, that the cases of both respondents were not concluded before the trial Court; definitely in the case of respondent in Revisional Appeal 325 there are two more legal issues to be determined and this was so conceded.

As regards respondent in R.A. 326 it is true that three legal issues were disposed of. But it was unpredictable whether new legal issues would have been raised by anyone of the litigants or even by the Court acting ex proprio motu at the trial which was to be continued before the trial Court, after the determination of the present appeals. In any event the issues decided were neither applied to the facts of that particular case nor was any final conclusion in respect thereof drawn by the trial Court in view of the direction referred to above.

The present appeals were taken against this decision and the re-examination of these cases started all over from the beginning before us as "this Court, when hearing an appeal from a judgment of one of its members, approaches the matter as a complete re-examination of the case with due regard to the issues raised by the parties on appeal, or to the extent they have been left undertermined by the trial Judge or in case of a successful appeal in addition to the above to the extent of the cross-appeal". (Vide *The Republic* v. *Lefkos Georghiades* (1972) 3 C.L.R. 594 at p. 690).

It is during the hearing of these appeals and the cross-appeal, as already stated at the beginning hereof, that the statements of the withdrawal-abandonment of the appeals and the cross-appeal were made by counsel; and it is at this same stage that the two respondents, who were present in Court during the proceedings before us, expressed their wish to withdraw their original recourses as well.

Having given the matter anxious consideration I have come to the conclusion that we are confronted with a serious matter of substantive law rather than with a simple matter of procedure which is undoubtedly regulated by the Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964. (Vide *Branco Salvage Ltd.*, v. *The Republic* (1967) 3 C.L.R. 213).

As regards the substantive law it is true that in Cyprus the right of an applicant to "resign" (παραίτησις) from a recourse has not been enacted by law. In the circumstances we are perfectly entitled to use Greek authorities on the matter as a guide for the purpose of deciding such an issue of administrative law which falls for determination.

In the 3rd edition of Tsatsos on the application for annulment before the (Greek) Council of State at p. 368 para. 185 we read the following.

"185. Τὸ δικαίωμα τῆς παραιτήσεως ἀπὸ τῆς ὑποβληθείσης αἰτήσεως ἀκυρώσεως δὲν ἔχει θεσπισθῆ διὰ τοῦ νόμου. Δοθέντος ὅμως, ὅτι ἀπαιτεῖται ἡ παρουσία συμφέροντος ὡς προϋπόθεσις τῆς παραδοχῆς τῆς αἰτήσεως ἀκυρώσεως, δέον νὰ γίνῃ δεκτὸν ὅτι, ἀφ' ἧς στιγμῆς ὁ αἰτούμενος τὴν ἀκύρωσιν δηλώσει ὅτι δὲν ἔχει συμφέρον νὰ ἐκδικασθῇ ἡ αἴτησις αὐτοῦ, δὲν ὑφίστατάι πλέον ἡ τυπικὴ αὕτη προ-

ὑπόθεσις, καθ' ὅσον ὁ μὴ στερούμενος τῆς ἱκανότητας τῆς ἐπὶ δικαστηρίου παραστάσεως εἶναι ὁ ἁρμοδιώτερος de juris e de jure κριτὴς τοῦ ἰδίου συμφέροντος. Τούτου ἕνεκεν ἡ παραίτησις ἀπὸ τοῦ ἀσκηθέντος ἤδη ἐνδίκου μέσου τῆς αἰτήσεως ἀκυρώσεως εἶναι δεκτή.

Ἡ περὶ παραιτήσεως δήλωσις δύναται νὰ ὑποβληθῆ καὶ διαρκούσης ἔτι τῆς συζητήσεως τῆς ὑποθέσεως.....".

("185. The right of abandonment of a filed recourse for annulment has not been enacted by law. But given that the presence of interest is required as a prerequisite for the acceptance of the application for annulment, it must be accepted that, from the moment the person praying for the annulment declares that he has no interest in having his application tried, there does not exist any more this formal prerequisite, since the person who is not deprived of the ability to appear before the Court is the more appropriate de juris e de jure Judge of his own interest. This being so the withdrawal of the already exercised legal measure of the application for annulment is acceptable.

The statement about the abandonment may be submitted even during the trial of the case.....").

In case 352/36 decided by the Greek Council of State (at p. 797 and 798) the applicant who was dismissed by the Municipality of Athens from his post as a night-watchman challenged by means of recourse of annulment the aforesaid decision of the Municipal Committee dated 11.7.1934; some five months thereafter on 22.12.1934 he submitted written statement to the Council of State to the effect that he received from the respondent Municipality and amount of money stating at the same time that he was resigning his recourse before the Council of State. After such a statement the the sub judice application was deprived of its object and the trial in question was declared abolished (καταργηθεῖσα). Similar to this case is case No. 353/36 also decided by the Greek Council of State.

In view of the fact that our Constitution provides by virtue of Article 146.2. that an "existing legitimate interest" is "sine qua non" condition for a successful recourse under Article 146.1, in view of the facts of these particular appeals and in particular

in view of the statements made by respondents themselves, (applicants in the original recourses) before us, and in the light of the authorities cited above I hold the view that the recourses in question should be struck out as they have been deprived of their object and all appeals including the cross-appeal should be dismissed.

In the circumstances I would not make any order as to costs either of the recourses or the appeals and the cross-appeal.

STYLIANIDES J. In the course of the hearing of four appeals by the respondent and the interested parties and a cross-appeal by one of the applicants against a decision of the President of the Court on issues formulated by him in another interim decision, counsel for the appellants and the counter-appellant stated that they abandon ("παραιτοῦνται") the appeals and the cross-appeal, respectively. The applicants-respondents personally applied to withdraw their recourses.

The question that arises is what the Court should do.

The administrative law and justice were introduced in this country by Article 146 of the Constitution that conferred exclusive jurisdiction on the Supreme Constitutional Court composed of three Judges to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person exercising any executive or administrative authority is contrary to any of the provisions of the Constitution or of any Law or is made in excess or in abuse of powers vested in such organ or authority or person. The revisional jurisdiction under Article 146 was being exercised always by the Full Bench of that Court.

Due to the events of December, 1963, by the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964) the Supreme Court of Cyprus was established as a constitutional continuity with all the rights and jurisdiction that vested in the two Courts provided in the Constitution, i.e. the Supreme Constitutional Court and the High Court.

Section 11 of Law No. 33/64 reads as follows:-

"11. (1). Any jurisdiction, competence or power vested in the Court under section 9 shall, subject to subsections

(2) and (3) and to any Rules of Court, be exercised by the full Court.

(2). Any original jurisdiction vested in the Court under any law in force and any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority as being contrary to the law in force or in excess or abuse of power, may be exercised, subject to any Rules of Court, by such Judge or Judges as the Court shall determine:

Provided that, subject to any Rules of Court, there shall be an appeal to the Court from his or their decision.

(3). Any appellate jurisdiction vested in the Court shall, subject to any Rules of Court, be exercised by at least three Judges nominated by the Court.

Each such nomination shall be made in respect of a period of four months at the beginning of such period".

The jurisdiction exercised by a Judge or Judges of the Supreme Court under subsection (2) of section 11 is vested in the Full Supreme Court, and not in the said Judge or Judges as such, as is the case with the jurisdiction vested in Judges of District Courts and Assizes, from whose decisions an appeal lies to the Supreme Court. It is only for reasons of expediency that a Judge or Judges of the Supreme Court may exercise such jurisdiction. The litigant concerned, however, is entitled to have the matter adjudicated upon by the Full Court wherein the jurisdiction in effect lies. The legislator made a distinction between appeals from the decision of one or more Judges of the Supreme Court to the Full Court on the one hand and appeals from other Courts with inferior jurisdiction on the other hand. The distinction is due to the difference between the two jurisdictions. (*Attorney-General* v. *Ibrahim*, 1964 C.L.R. 195; *Republic* v. *Christakis Vassiliades*, (1967) 3 C.L.R. 82). The legislator provided for these two kinds of appeals in two different subsections of the same section.

The jurisdiction to grant a remedy by means of a recourse for annulment as provided by Article 146.1 is not an innovation

of the drafters of the Constitution of Cyprus but it was vested in the Supreme Constitutional Court in order to create thus an administrative Court on the model of administrative Courts, such as Councils of State, in other countries. This has been recognized on more than one occasion by the Supreme Constitutional Court. (See, inter alia, *The Holy See of Kitium and The Municipal Council of Limassol*, 1 R.S.C.C. 15, at p. 21, and *Kyriakides and The Republic*, 1 R.S.C.C. 66, at p. 69).

So, even though the wording of Article 146.1 is somewhat different from provisions defining the jurisdiction of administrative Courts in other countries, general principles of administrative law governing the availability of the remedy under Article 146.1 have to be taken, as far as possible, into account in defining the extent of the jurisdiction under the said Article.

A recourse is aimed at an administrative decision. The subject-matter of a revisional appeal continues, in substance, to be the administrative decision which is challenged by the recourse; and whether or not the applicant is entitled to the relief claimed. (*Costas Pikis* v. *The Republic, Minister of Interior and Another*, (1968) 3 C.L.R. 303, at pp. 305-306). The jurisdiction of this Court emanates from Article 146 of the Constitution and is defined therein, and the jurisdiction of the Greek Council of State sitting on appeal from the decisions of the ordinary administrative Courts is not analogous to the jurisdiction of this Court. (*Miltiades Papadopoulos* v. *The Republic*, (1970) 3 C.L.R. 169, at p. 173; *The Republic* v. *Savvas Perikleous*, (1972) 3 C.L.R. 63, at p. 68).

The question to be determined in a revisional appeal continues to be the validity of the administrative decision which is challenged by the recourse, as now seen in the light of the proceedings before the trial Judge, including his judgment. The recourse under Article 146 is made to the Court; and its subject is all along the validity of the administrative act or decision challenged. (*Constantinides* v. *The Republic, (Minister of Finance)*, (1969) 3 C.L.R. 523, at p. 530).

The Court in a revisional appeal is seized with the recourse itself. When hearing an appeal from a judgment of one of its members, it approaches the matter as a complete re-examination of the case with regard to the issues raised by the parties on

appeal or to the extent that they have been left undetermined by the trial Judge or in case of a successful appeal in addition to the above to the extent of a cross-appeal. The litigant is entitled to the opinion of the Court. (*The Republic* v. *Lefkos Georghiades*, (1972) 3 C.L.R. 594).

Triantafyllides, P., in *David Christou and Others* v. *The Republic of Cyprus*, (1982) 3 C.L.R. 634, at p. 639, said:-

> "I would, indeed, be inclined to the view that there is nothing to prevent the filing of applications such as those now before me because, in the light of the relevant provisions of section 11 of Law 33/64, a revisional jurisdiction appeal is to be regarded as a continuation before the Full Bench of the Supreme Court of the proceedings in the recourse concerned which took place, in the first instance, before a Judge of the Court; and what, in essence, continues to be in issue at the stage of the revisional jurisdiction appeal is still the validity of the subject-matter of the particular recourse in which the appealed from judgment has been given".

In the recent Revisional Jurisdiction Appeal No. 316 (still unreported) the Court dismissed the *recourse* of the appellants on the ground that they did not possess a legitimate interest at the time of the filing of the recourse, as envisaged by Article 146.2 of the Constitution, a ground that was not raised before and was not dealt with by the first instance Judge.

The jurisdiction of the Court is exercised subject to the Rules of Court. (The Supreme Constitutional Court Rules, 1962, and the Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964).

The Supreme Court Rules, 1962, r. 18, provides:-

> "The Civil Procedure Rules in force in the Republic on the date of the making of these Rules shall apply, mutatis mutandis, to all proceedings before the Court so far as circumstances permit or unless other provision has been made by these Rules or unless the Court or any Judge otherwise directs".

The Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964, r. 3, reads:-

"The provisions of Order 35 of the Civil Procedure Rules relating to appeals shall apply, mutatis mutandis, to an appeal from a decision of a Judge or Judge exercising revisional jurisdiction under subsection (2) of s.11 of the Law".

The latter rule was considered in relation to enlargement of time for filing appeal from a decision of a Judge of the Supreme Court in *Branco Salvage Ltd.* v. *Republic of Cyprus*, (1967) 3 C.L.R. 213, and in relation to a ground for annulling a promotion not amounting merely to a new question of Law based on facts admitted or clearly proved before the trial Judge in *Christodoulos Nissis (No. 2)* v. *The Republic of Cyprus, through the Public Service Commission*, (1967) 3 C.L.R. 671, and for extension of time within which to file an appeal in *Cyprian Seaway Agencies Ltd. and Others* v. *The Republic of Cyprus*, (1981) 3 C.L.R. 271).

In the application of the Civil Procedure Rules, both under r. 18 of the Supreme Constitutional Court Rules, 1962, and r.3 of the Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964, regard should be had to the fundamental difference between a civil action and a recourse. For a recourse to be entertained by a Court, the applicant must have a legitimate interest. The object of the administrative jurisdiction is the judicial control of the acts of the Administration. The Court carries out an inquiry. The principles of administrative law and the procedures obtaining in countries of the Continent, such as Greece and France, where administrative Courts function, influenced to a great extent our administrative law, practice and procedure. The wording of the rules that make mutatis mutandis the Civil Procedure Rules applicable lends very strong support to this proposition. The Civil Procedure Rules are not applicable where the nature of the administrative jurisdiction does not permit it.

In *Tsatsos—Application for Annulment*—3rd Edition, p. 368, we read:-

"185. Τὸ δικαίωμα τῆς παραιτήσεως ἀπὸ τῆς ὑποβληθείσης αἰτήσεως ἀκυρώσεως δὲν ἔχει θεσπισθῆ διὰ τοῦ νόμου. Δοθέντος ὅμως, ὅτι ἀπαιτεῖται ἡ παρουσία συμφέροντος ὡς προϋπόθεσις τῆς παραδοχῆς τῆς αἰτήσεως ἀκυρώσεως, δέον νὰ γίνῃ δεκτὸν ὅτι, ἀφ' ἧς στιγμῆς ὁ αἰτούμενος τὴν ἀκύρωσιν δηλώσει ὅτι δὲν ἔχει συμφέρον νὰ ἐκδικασθῆ ἡ

αἴτησις αὐτοῦ, δὲν ὑφίσταται πλέον ἡ τυπικὴ αὕτη προϋπόθεσις, καθ' ὅσον ὁ μὴ στερούμενος τῆς ἱκανότητας τῆς ἐπὶ δικαστηρίου παραστάσεως εἶναι ὁ ἁρμοδιώτερος de juris e de jure κριτὴς τοῦ ἰδίου συμφέροντος. Τούτου ἕνεκεν ἡ παραίτησις ἀπὸ τοῦ ἀσκηθέντος ἤδη ἐνδίκου μέσου τῆς αἰτήσεως ἀκυρώσεως εἶναι δεκτή".

("185. The right of abandonment of a filed recourse for annulment has not been enacted by law. But given that the presence of interest is required as a prerequisite for the acceptance of the application for annulment, it must be accepted that, from the moment the person praying for the annulment declares that he has no interest in having his application tried, there does not exist any more this formal prerequisite, since the person who is not deprived of the ability to appeal before the Court is the more appropriate de juris e de jure Judge of his own interest. This being so the withdrawal of the already exercised legal measure of the application for annulment is acceptable").

(Cases No. 186/30, 367/30, 825/30, 211/31, 352/36, 353/36, 115/37, 72/43, 26/44, 470/46, 2025/52).

(See also *H. G. Kyriacopoulos—Greek Administrative* Law—"C", pp. 128-129).

In a number of cases (see, inter alia, Cases of the Greek Council of State No. 1820/1948, 925/1950, 1854/1951 and 2130/1952), the Greek Council of State held that "παραίτησις χωρεῖ νομίμως καὶ μετὰ τὴν συζήτησιν" (a recourse may be abandoned even after the hearing).

The applicant is the best Judge of his case. He is entitled to withdraw his recourse to the Court at any time before judgment. This is in some way further supported by Article 30 of the Constitution and Article 6 of the Convention on Human Rights whereby the right of access to the Court is safeguarded, and "the right of access" implies, in my view, a right to withdraw from the Court.

The recourses have to be dismissed. The Court is not pronouncing on legal and constitutional issues unless it is necessary for the determination of a dispute before it.

In this case questions of legal and constitutional nature were raised. Due to the course that these cases have taken, it is not permissible to pronounce obiter on them. I should not, however, be taken that I agree with the judgment of the first instance Judge on all the points dealt with by him. It is upon the appropriate organs of the State to consider the issues raised.

In the result the appeals, the cross-appeal and the recourses are hereby dismissed with no order as to costs.

PIKIS J.: Yiannakis Louca and Antonios Anastassiou were appointed members of the Public Service Commission for a six-year period from 1.7.1979 to 30.6.1985. Before the expiration of their term, the President of the Republic terminated their services by a decision published on 22.1.1982. The notice of termination in the Gazette does not reveal the reasons for the decision. At first, they were invited to submit their resignation. In face of their refusal, the President of the Republic terminated their services in exercise of the powers vested in him by sub-section 3 of section 4 of the Public Service Law—33/67, and notified them accordingly by a letter dated 15.1.1982. At the same time, he expressed appreciation for the services rendered by the dismissed members of the Public Service Commission. They challenged the legality of the act whereby their services were terminated and, sought its annulment by recourses filed under Article 146.1 of the Constitution. On behalf of the Attorney-General, it was contended the action of the President constituted an act of government (act de gouvernement) inamenable to judicial review. And as such, it fell outside the sphere of judicial review of administrative or executive action. Briefly, acts of government are governmental actions of a predominantly political character, for which the government is politically but not legally accountable. Originally, the concept was evolved in France but gained acceptance in other continental jurisdictions, including Greece. It bears some similarity to the doctrine of "Acts of State" under English law, although the two concepts are distinct and have but few features in common. It is difficult to trace a comprehensive definition of acts of government in continental law. There is a noticeable tendency, however, towards limiting, in the interests of the rule of law the class of government actions that are beyond judicial review. (The subject is discussed in almost every textbook of

administrative law—See, inter alia, *Modern Tendencies of the Principle of Legality in Administrative Law*, by *Tachos*, pp. 38–42; *The Application for Annulment before the Greek Council of State*, by *Tsatsos*, 3rd ed., pp. 175–180). In the case of one of the two applicants, namely Yiannakis Louca, an additional reason was given for his dismissal, that is, his engagement in business activities, contrary to the provisions of s.8 of the Public Service Law, prohibiting the exercise of an occupation or engagement in a profit-making activity, without the prior permission of the Council of Ministers. If at all relevant to the decision of the President, the decision was not taken in the exercise of disciplinary jurisdiction over the member. No opportunity was ever given to him to answer the charges before dismissal. In the case of Anastassiou, termination was justified solely by reference to the alleged power of the President to terminate at will services of members of the Public Service Commission under s.4(3) of Law 33/67. The applicants disputed the validity of the assertion that the action of the President was in the nature of an "act de gouvernement". More consequentially, they challenged the constitutionality of sub-section 3 of section 4, conferring power on the President to terminate services of members of the Public Service Commission on the ground it was inconsistent with the letter of Article 124.5 of the Constitution and defied the spirit of the Constitution, as manifested in Chapter 1 of Part VII of the Constitution providing for the establishment of the Public Service Commission, an independent body with sole responsibility for the manning of the Public Service. Under the Constitution, members of the Public Service Commission enjoy security of tenure as Judges of the High Court and are liable to be dismissed in a like manner, that is, by a decision of the Supreme Council of Judicature. Proceedings before the Council are of a judicial nature (see, Article 153 of the Constitution).

The basic issues before the trial Court were, if I can thus condense them—

(a) The constitutionality of sub-section 3 of section 4 of the Public Service Law, if constitutional,

(b) the nature of the action of the President taken under sub-section 3 and, in the case of Yiannakis Louca

(c) whether the action was warranted in view of alleged breach of the provisions of s.8 of the Law. Given that the action of the President was not associated with the exercise of disciplinary powers the strength of the case for the Republic on this score, was severely weakened.

Although the parties concluded the argument and exposition of their case before the trial Court, the trial Judge did not dispose of the case in its entirety. He held back a final decision, so far as I may gather from his judgment, in expectation of the judgment on appeal that he anticipated on the issues resolved by his judgment. Leaving aside criticism made by counsel, of the inconclusiveness of judicial action, it is more than clear that the learned President resolved the two most consequential issues in the proceedings, those listed under (a) and (b) above, that is, the constitutionality of subsection 3 of section 4 and, the nature of the Presidential action. The decision sealed, as Mr. Papadopoulos correctly—it seems to me—submitted, the outcome of the recourse of Mr. Anastassiou. The action of the termination of services of Anastassiou was doomed to annulment upon dismissal, of the contention of an unqualified right vesting in the President to terminate his services. The points left unresolved, namely 3 and 5, were confined to the case of Yiannakis Louca.

The Attorney-General appealed on behalf of the Republic, against the above decision on the ground the trial Court wrongly held that the act of the President was subject to judicial review under Article 146.1. They sought vindication of their position on appeal. The trial Court wrongly decided, according to the notice of appeal, that the decision of the President was not an act of government. An appeal was also filed by the interested parties, namely Sergides and Hadjiprodromou, appointed by the President to replace Louca and Anastassiou. They joined in the argument that the action of the President was beyond the scope of judicial review. Yiannakis Louca took a cross-appeal mostly directed against that part of the judgment of the trial Court, holding the law to be constitutional. In the judgment of Triantafyllides, P., the Public Service Commission, set up by Law 33/67, is an altogether different body from the Public Service Commission envisaged by the Constitution. Hence, appointment and termination of the service of its members was

not governed by the provisions of Article 124.5 of the Constitution. In so holding, the learned Judge derived support from a previous decision of his own, notably, *Hadjianastassiou* v. *Republic* (1983) 3 C.L.R. 1173, where the juridical basis of the Public Service Commission was reviewed. Counsel for the appellant strenuously argued the doctrine of necessity could not possibly permit departure from the provisions of the Constitution, except to the extent strictly necessary to tidy over the emergency and fill the vacuum created by the withdrawal of the Turkish members of the Public Service Commission. Counsel for Anastassiou espoused this submission in answer to the appeal of the Republic. No need arose in his case, Mr. Papadopoulos explained, to file a cross-appeal for the judgment given sealed, except in name, the outcome of the recourse of his client. What remained was a formal order of annulment.

A somewhat detailed reference was made to the background of the proceedings notwithstanding applications for leave to withdraw the appeal and cross-appeal, for reasons that will be presently explained. The Court has a discretion in the matter, as all counsel have acknowledged. And, in my judgment, the discretion is not taken away by the decision of the applicants to withdraw their recourses. Parties to litigation cannot, by a unilateral act, extinguish a judgment at first instance. So, to acknowledge would be tantamount to recognising a right to a litigant to thwart the judicial process. Nor is it permissible under the Rules. Rule 18 of the Rules of the Supreme Court makes applicable, mutatis mutandis and, so far as circumstances permit, the Civil Procedure Rules in the conduct and pursuit of litigation under Article 146.1 of the Constitution. They are also applicable to proceedings under s.11(2) of the Courts of Justice (Miscellaneous Provisions) Law —33/64. The Civil Procedure Rules include Order 15, regulating the circumstances under which an action may be discontinued or withdrawn. Withdrawal or discontinuance is impermissible without the prior leave of the Court, after a step is taken in litigation subsequent to defence. In granting leave, the Court may impose such terms, as may appear to it just. There is nothing to exclude the application of Ord. 15 in the conduct of litigation under Article 146.1. On the contrary, pleadings follow a similar order and there is at least just a strong justification, if not stronger, for the application of Ord. 15

to proceedings under Article 146.1. The legality of action in the domain of public law, is at issue. The exercise of the rights of a litigant must not be at the expense of justice of legality. The discretion of the Court under Ord. 15, R.1, is exercised judicially, in the light of the facts of the case and in the interests of justice (see, *Hess* v. *Labouchers* (14 T.L.R. 350); *Fox* v. *Star Newspaper Co.* [1899] 69 L.J. Q.B. 117; *Tsirou* v. *Shitta* (1974) 6 J.S.C. 753, a judgment of Loris, P.D.C., as he then was). However, the issue is somewhat academic for, by a subsequent Rule of the Supreme Court, namely, that regulating appeals in the area of revisional jurisdiction, the provisions of Ord. 35 of the Civil Procedure Rules, were made, mutatis mutandis, applicable to appeals under sub-section 2 of s.11 of Law 33/64. The decision of the Full Bench of the Supreme Court, in *Branco Salvage Ltd.*. v. *Republic* (1967) 3 C.L.R. 213, establishes, to my comprehension, that the right to appeal, as well as its exercise, are regulated by the provisions of Ord. 35 of the Civil Procedure Rules*. Moreover, it strongly suggests, no doubt in view of the provisions of r. 18 of the Rules of the Supreme Court, that the Civil Procedure Rules apply, mutatis mutandis, in their entirety, in the pursuit of proceedings under Article 146.1 of the Constitution. After an appeal is fixed for hearing, its abandonment is subject to the discretion of the Court that may condition withdrawal on such terms as it thinks fit. It reads:

> "*Ord.* 35 *R.* 29(3): If after an appeal is fixed for hearing the appellant wishes to abandon his appeal he may do so by giving notice in writing to the respondent and to the said Registrar, and a Judge of the Court may strike out the appeal on such terms as he thinks fit. The provisions of paragraph (2) of this rule in regard to notice under rule 10 of this Order shall apply".

It is for this reason I made reference to the background and issues in the proceedings in order to be guided by such facts in the exercise of my discretion. Order 35 r. 29(3) imports discretion comparable to that vested in the Court of Appeal in England, under Rules of Court, with regard to withdrawals of appeals. In *Tod Heatley* v. *Barnard—The Weekly Notes*

* Also relevant is the judgment of A. Loizou, J., in *Cyprian Seaway Agencies* v. *Republic* (1981) 3 C.L.R. 271.

1890, p. 130, where the Court of Appeal refused leave to withdraw, unless satisfied of the reasons behind appellant's desire to withdraw the appeal. In another case, *Lees* v. *Motor Insurers' Bureau* [1953] 1 W.L.R. 620, Singleton, L.J., commented that it seemed unusual for a successful party in a case where judgment had been reported to receive the full amount of the claim, while agreeing to the dismissal of the appeal. In the same case, Denning, L.J., as he then was, observed that an appeal could not be allowed by consent for that would be reversing the judgment at first instance without hearing the appeal.

The word "may", in the context of Ord. 35 r. 29(3), invests the Court with discretion in the matter of withdrawal. This is consistent with the etymological meaning of the word "may", as noted in the case of *Lindsay Parkinson Ltd.* v. *Triplan Ltd.* [1973] 2 All E.R. 273, 285. The Court was concerned with the interpretation of the word "may" in s.447 of the Companies Act, 1948, regarding security for costs by an insolvent company. The word "may" was construed as conferring unfettered discretion upon the Court to resolve the matter in the way deemed appropriate. There is no burden one way or the other, as Lord Denning, M.R. put it.

Mr. Antoniades suggested the discretion of the Court, under Ord. 35 r. 29(3), is limited to making an appropriate order as to costs. The wording of the Rule, as explained, rules out the limitation suggested by counsel for the Republic. Mr. Antoniades also suggested, it is relevant to heed the circumstances under which a recourse may be withdrawn in Greece. A party may resign from his cause at any time prior to or at the hearing of the recourse, but not subsequent thereto (see, *Conclusions from the Jurisprudence of the Greek Council of State* 1929–59, p. 275). Considering that an appeal is by way of rehearing, he argued that the hearing of the recourse may be treated as incomplete because addresses on appeal were not completed. Three remains, as earlier indicated, to hear the reply of counsel for the Republic and, the interested parties. To begin with, the case was exhaustively argued before the trial Court, as counsel informed us and, in that sense, the hearing of the case was completed. An appeal, as defined in Cyprus, is unknown in Greece. Moreover, analogies with the exceptional judicial measure of cassation, cannot be carried too far and may be

misleading (αναίρεση—le recours en cassation). Cassation is not an appeal but an extraordinary measure of review by a higher Court, of the legality of the decision of a Court of first instance. It is confined to legal grounds, limited to the scrutiny of the competence and composition of the Court, breach of substantive procedural rules and erroneous interpretation of laws (see, *Conclusions from the Jurisprudence of Greek Council of State* 1929-59, 283; *Dagtoglou—General Administrative Law*, 1982, Vol. (2), p. 239 et seq.). Cassation is constitutionally regulated in Greece by the provisions of Article 95(1) of the 1975 Constitution. It found its way in the Greek Constitution since 1927. Interpretation of a plain legal provision, like Order 35 r. 29(3), contrary to the meaning and tenor of its provisions, is totally unwarranted. Our duty is to give effect to the law as laid down in our legislation. Moreover, it would be dangerous to subject the interpretation of a provision of the law, fashioned to the exercise of appellate jurisdiction by the Court of Appeal in England, to a concept such as cassation, unknown to English law. Appellate jurisdiction, in the domain of revisional jurisdiction, is, under our law, exercisable in much the same way as appellate jurisdiction is exercised and is regulated by the same rules of procedure, namely, Order 35. Like an appeal from a decision of a civil Court, it is by way of rehearing (see, s.25(3)—Law 14/60, regarding the scope of appellate jurisdiction in civil and criminal appeals). For the reasons indicated hereinabove, I am in no doubt the Court has a discretion whether to sanction the withdrawal of an appeal. The Court may refuse leave or may impose such terms as it deems appropriate. Finally, we must decide whether to allow withdrawal of the appeals. Application for leave to withdraw, was made after the completion of the arguments raised in support of the appeal of the Republic and the interested parties and the answers thereto by counsel for Yiannakis Louca and Antonios Anastassiou and, after hearing arguments in support of the cross-appeal of Louca. The submission of the parties followed closely the arguments raised before the trial Court. There remains to hear counsel for the Republic and the interested parties in reply.

On the adjourned hearing, counsel for the Republic informed us the case was settled out of Court and sought leave to withdraw the appeal. The terms of settlement were not disclosed. I can infer the appeal was settled by the payment of a sum

of money to Yiannakis Louca and Antonios Anastassiou. Counsel for Louca likewise applied for leave to withdraw the appeal. In face of submissions that the leave of the Court was required to withdraw the appeals, Louca and Anastassiou made a statement to the Court, to the effect that they withdrew the recourses. The statements were made, so far as I gather, in the hope of obviating need for the leave of the Court for the withdrawal of the appeals. What they overlook, is that they cannot turn the clock back. Nor can they obliterate by a unilateral act the judgment under appeal. If the litigants were at liberty on appeal to extinguish by consent the effects of a judgment, grave consequences would befall the administration of justice, especially a judgment that has far reaching repercussions, as the judgment in the present case, on the composition of a constitutional organ, the Public Service Commission. If parties were at liberty so to do, the judicial process would be made subservient, to a great extent, to the interests of the parties. Such a course is impermissible. No one can obliterate, by agreement on appeal, a judgment of the Court. And in any event, leave is required to withdraw the appeal. The Court has a discretion in the matter.

Even where an unqualified procedural right is vested in a litigant, there is inherent power in the Court to stop its exercise, where this would lead to an abuse of the process of the Court. In the exercise of this power, the *House of Lords* in *Castanho* v. *Brown & Root (U.K.) Ltd.* [1981] 1 All E.R. 143, discharged notice of discontinuance of proceedings notwithstanding the unqualified right vested in the plaintiff by the Rules, at that early stage, to discontinue proceedings. The case serves to demonstrate the magnitude of the power of a Court to ensure the efficacy of the judicial process.

In exercising my discretion, I cannot overlook the implications of the decision which, in the case of Antonios Anastassiou, signify, except in name, the annulment of the decision to terminate his services. It is evident to me that the learned trial Judge refrained from proceeding further, in anticipation of the judgment on appeal. The matter at issue resolved, as I construe the judgment at first instance, is one of vital interest to the public —it affects the composition of an important institution of the State, the Public Service Commission.

From what I have heard so far and, having anxiously reflected on the matter, I strongly incline to the view that the decision under appeal, importing nullity of the decision to terminate the services of at least one of the two dismissed members of the Commission, is well founded but, for reasons different from those given by the learned trial Judge. The law, in virtue of which the act was taken, namely, sub-section 3 of section 4 of the Public Service Law, is, to my mind, unconstitutional. The doctrine of necessity authorises departure from the provisions of the Constitution only to the extent warranted by the necessity. Any action beyond that limit, is unjustified. This emerges clearly from the leading decision on the application of the doctrine of necessity in the *Attorney-General of the Republic* v. *Mustafa Ibrahim*, 1964 C.L.R. 195 (see, also, the recent decision of the Full Bench of the Supreme Court, in *Aloupas* v. *National Bank of Greece* (1983) 1 C.L.R. 55). I cannot ignore the repercussions from setting aside a decision under appeal on the legality of the composition of the Public Service Commission, nor the implications of s.4 sub-section 3 of Law 33/67 on security of members of the Public Service Commission, most essential for the discharge of their constitutional functions. The exercise of my discretion, I repeat, cannot solely depend on the view that Louca and Anastassiou take of their rights. But I do not overlook that my approach to the matter can cause no detriment to their interests.

On the other hand, if the Republic did pay, by way of settlement, a sum of money to the applicants, presumably representing lost salaries, such action constitutes implied acknowledgment of the invalidity of the termination of services of Louca and Anastassiou. If not, why pay any sum of money to them? In such circumstances, I fail to see why the matter was not pursued to the end to obtain a definitive statement of the law from the highest judicial authority, the Full Bench of the Supreme Court.

For all the above reasons, I refuse withdrawal of the appeals.

Court: In the result, appeals and cross-appeals are dismissed and recourses are struck out as withdrawn, without any order as to costs.

Appeals and cross-appeals dismissed. No order as to costs.