1984 April 30

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS PANTELI LOIZOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COMMANDER OF POLICE AND/OR THE MINISTER OF INTERIOR AND DEFENCE,

Respondents.

(*Case No.* 124/83).

Administrative Law—Annulment of decision terminating an acting appointment on the ground that applicant was not given a chance to be heard—Reconsideration of the matter after giving applicant the chance to make both oral and written representations—Respondents perfectly entitled to re-examine case and arrive at a new decision which should not necessarily be a decision contrary to the first one—New decision not in conflict with the annulling judgment of the Supreme Court and reasonably open to them on the material before them.

Abuse or excess of power—Burden of proof—Lies with applicants.

Administrative Law—Administrative acts or decision—Reasoning—Due reasoning—May be found either in the decision itself or in the official records related thereto.

The applicant, a Police Sergeant, received on 15.9.1972 an acting appointment to the rank of Police Inspector. The said acting appointment was terminated by virtue of a decision of the respondents dated 7.8.1975. Upon a recourse by the applicant the decision terminating his acting appointment was annulled by the Supreme Court on 17.9.1982 on the ground that he was not given a chance to be heard before such decision was taken. Following the judgment of the Supreme Court the Chief of Police re-examined the case of the applicant after giving him a

chance to make both oral and written representations on the matter. By means of a new decision taken on 12.1.1983 the Chief of Police terminated the acting appointment of the applicant with retrospective effect as from 7.8.1975. Hence this recourse.

Counsel for the applicant mainly contended.

(a) That the decision of the respondents dated 12.1.83 is in direct conflict with the judgment of this Court dated 17.9.1982;

(b) That the sub judice decision in the present recourse was in excess and/or abuse of power.

(c) That the sub judice decision was not duly reasoned.

Held, (1) that the annulment of the first decision does not mean that the applicant has acquired vested rights to hold the acting appointment of Police Inspector; that the respondents were perfectly entitled to re-examine his case and arrive at a new decision; and their new decision should not necessarily be a decision contrary to their first one; that in view of the fact that the respondents have given this time, complying with the judgment of this Court, the opportunity to the applicant to be heard and taking into consideration that the applicant was heard by the respondents both in writing and viva voce the sub judice decision of the respondents, which is not in conflict with the judgment of this Court of 17.9.1982 was reasonably open to them having regard to the facts and circumstances of this case.

(2) That the burden of proof that there exists excess or abuse of power lay with the applicant and he has failed in the present case to discharge such burden.

(3) That the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto; that having examined the sub judice decision in the light of all other documents contained in the file this Court is satisfied that the sub judice decision is duly reasoned.

Application dismissed.

Cases referred to:

Koukoullis v. Republic, 3 R.S.C.C. 134;

Kousoulides v. Republic (1967) 3 C.L.R. 438;

Georghiades v. Republic (1967) 3 C.L.R. 653 at p. 666;

HadjiSavva v. *Republic* (1972) 3 C.L.R. 174 at p. 225;
Petrides v. *Republic* (1983) 3 C.L.R. 216.

Recourse.

Recourse against the decision of the respondent to terminate applicant's acting appointment to the rank of Police Inspector.

C. Anastassiades for *E. Efstathiou*, for the applicant.

A. Vladimirou, for the respondent.

Cur. adv. vult.

Loris J. read the following judgment. The applicant by means of the present recourse impugns the decision of the respondents communicated to him by letter dated 12.1.1983, whereby his acting appointment to the rank of Police Inspector was terminated with retrospective effect as from 7.8.1975.

The relevant facts of this case are briefly as follows:

The applicant, a Police Sergeant, received on 15.9.1972, an acting appointment to the rank of Police Inspector.

The said acting appointment of the applicant was terminated by virtue of a decision of the respondents dated 7.8.1975.

The aforesaid decision of the respondents was attacked by the applicant in Case No. 152/75 (vide *Loizou* v. *The Republic*, (1982) 3 C.L.R. 988). By virtue of the judgment of this Court given on 17.9.1982 in the case just now mentioned the said decision of the respondents was annulled, for the reasons stated in the judgment to which reference will be made later on in the present judgment.

On 23.10.1982 a letter (exhibit 1 attached to this recourse) was addressed by counsel for applicant to the Chief of Police requesting in effect the reappointment of the applicant to the acting rank of Police Inspector.

On 1.11.1982 the Chief of Police replied to the counsel for applicant by a registered letter (exhibit 2 attached to the recourse) expressing his intention to re-examining the case of the applicant in the light of the judgment of the Court, inviting at the same time the applicant to submit to him his representations either oral or in writing within 15 days from the date of the said registered letter. On 10.11.1982 the applicant

addressed to the Chief of Police a letter on this matter which is exhibit 3 attached to the present recourse.

On 11.11.1982 the applicant visited the Chief of Police at latter's office and made to him oral representations on the matter, supplementing thus his letter of 10.11.1982 (vide para. 2 of the 2nd page of exhibit 4 dated 12.1.1983 attached to the present recourse).

Thus after hearing the applicant on the matter, the Chief of Police gave his new decision (vide exhibit 4 attached to the recourse), which was approved by the Minister of Interior, terminating the acting appointment of the applicant with retrospective effect as from 7.8.1975.

The applicant attacks by means of the present recourse the said new decision of 12.1.1983; the grounds of law on which he relies although set out in 9 paragraphs in the recourse, to my comprehension boil down to 3 main grounds as follows:

1. The decision of the respondents dated 12.1.1983 is in direct conflict with the judgment of this Court dated 17.9.1982.

2. The sub judice decision in the present recourse is in excess and/or abuse of power.

3. The decision is not duly reasoned.

The respondents in their opposition raise a preliminary objection to the effect that the recourse "does not fulfil the prerequisites of Article 146 of our Constitution"; nothing more was added and I have noted that it was neither mentioned in the written address of learned counsel appearing for the respondents nor argued at the clarification stage; therefore I consider the preliminary objection raised in the opposition which was neither explained nor pursued any further as abandoned.

The respondents in their opposition allege further that the sub judice decision is "lawful, duly reasoned and in any way it was not reached at in excess or abuse of power nor does it constitute disrespect or contempt of Court".

Let us now consider the complaints of the applicant. First of all the judgment in *Loizou* v. *The Republic* (supra) must be

borne in mind. The substance of the whole judgment it to be found at p. 1001 (lines 13–22); it reads as follows:

> "From the above it is abundantly clear that as the true nature and purpose of the sub judice decision was to impose a sanction on the applicant the latter ought to have been given the chance to be heard before such decision was taken. This was never done and therefore one of the most important rules of natural justice was violated notably the rule that both sides must be heard —audiatur et alteram partem—.
>
> I do not intend to deal with the remaining complaints of the applicant; they are ancillary to his main complaint which I have already sustained".

The judgment of this Court of 17.9.1982 is crystal clear: The sub judice decision was annulled because the applicant was not given the chance to be heard before such decision was taken; and this Court sitting as an administrative Court was perfectly entitled not to examine the remaining complaints in that case having sustained applicant's main complaint.

As a result the then sub judice decision was annulled. This does not mean that the applicant has acquired vested rights, as alleged in the present recourse, to hold the acting appointment of Police Inspector; the respondents were perfectly entitled to re-examine his case and arrive at a new decision; and their new decision should not necessarily be a decision contrary to their first one. Annulment of the decision in case No. 152/75 could not, and in fact did not direct the reappointment of the applicant to the acting rank of Police Inspector but simply directed that the matter had to be reconsidered; therefore the subsequent decision amounts to such reconsideration and constitutes a sufficient compliance in the sense of Article 146.5 of the Constitution (vide *Papasavva* v. *The Republic* (1979) 3 C.L.R. 563).

In view of the fact that the respondents have given this time, complying with the judgment of this Court, the opportunity to the applicant to be heard and taking into consideration that the applicant was heard by the respondents both in writing on 10.11.1982 (exhibit 3) and viva voce on 11.11.1982, I hold the

view that the sub judice decision of the respondents, which is not in conflict with the judgment of this Court of 17.9.1982, was reasonably open to them having regard to the facts and circumstances of this case as they emerge from the several documents attached to the recourse, and the opposition thereto, and in particular Appendix 'E' attached to the opposition, which throws ample light to the specific issue of the abolition of the institution of secondment of a Police Office to the office of the Chief of Staff of the National Guard, an abolition which dates back to the 7.8.1975.

In this respect "once the decision was annulled and the respondents had to reconsider the case it was perfectly legitimate for them to take into account all facts which existed at the time of the original decision irrespective of whether the decision annulled was in effect based on such facts or not, and they were not bound to base their new decision exclusively on the facts and circumstances on which the original decision was based" (vide *Kyprianides* v. *The Republic*, (1968) 3 C.L.R. 653 at p. 660 and on appeal (1970) 3 C.L.R. 176).

In spite of the fact that the applicant attributes generally, abuse or excess of power to the respondents, I could not trace any particular instance of specific abuse or excess of power unless the applicant refers to his allegations that the sub judice decision is in direct conflict with the judgment of this Court dated 17.9.82 in which case such allegations have been dealt with and answered above. I shall confine myself in repeating here what has been said time and again, that the burden of proof that there exists excess or abuse of power lay with the applicant (vide *Koukoullis v. The Republic*, 3 R.S.C.C. 134, *Kousoulides v. The Republic*, (1967) 3 C.L.R. 438); and the applicant in the present case has failed to discharge such burden.

In connection with reasoning it is well settled that administrative decisions have to be duly reasoned; what is due reasoning is a question of degree dependant upon the nature of the decision concerned (*Athos Georghiades* and *Others v. The Republic* (1967) 3 C.L.R. 653 at p. 666).

Reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto

(*Georghios HadjiSavva v. The Republic*, (1972) 3 C.L.R. 174 at p. 225, *Petrides v. The Republic*, (1983) 3 C.L.R. 216).

Having examined the sub judice decision set out in exhibit 4 attached to the present recourse in the light of all other documents contained in this file, I am satisfied that the sub judice decision is duly reasoned.

For all the above reasons the present recourse fails and it is accordingly dismissed; I must add that it is with great reluctance that I have decided to make no order as to costs.

Recourse dismissed with no order as to costs.