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[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, SAVVIDES, LORIS, STYLIANIDES, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF EDUCATION,

Appellant,

v.

IVI NISSIOTOU,

Respondent.

(Revisional Jurisdiction Appeal No. 336).

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF EDUCATION,

Appellant,

v.

IVI NISSIOTOU,

Respondent.

(Revisional Jursidiction Appeal No. 344).

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

Appellants,

v.

CONSTANTINOS CARAYIANNIS,

Respondent.

(Revisional Jurisdiction Appeal No. 354).

Legitimate interest—Article 146.2 of the Constitution—Headmistress' application for transfer to a particular school in

the Nicosia area—Rejection and transfer of another Headmaster thereto and nine other Headmasters to schools in the same area—Only the transfer to the school to which she had requested to be transferred has adversely and directly affected her legitimate interest in the sense of the above Article—The remaining transfers have not and could not be annulled by a recourse of the said Headmistress.

Educational Officers—Transfers—Headmaster Secondary Education—Application for transfer within the same town—Whether they have to be decided by the Minister of Education himself—Or whether they can be dealt with by means of a decision of the Head of Department of Secondary Education under section 39(2) of the Public Educational Service Law, 1969 (Law 10/69)—"Appropriate Authority" and "Minister" in section 2 of Law 10/69— Differences in this respect between Law 10/69 and the Public Service Law, 1967 (Law 33/67)—Regulation 14(1) of the Educationalists (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972—Reasonably open to the Head of Department of Secondary Education, on the material before him, to decide that it was in the interests of Education not to transfer the applicant.

Constitutional Law—Written requests or complaints under Article 29 of the Constitution—Recourse for failure to reply to—Principles applicable—Subject matter of request has to be within the competence of the Supreme Court under Article 146.1 of the Constitution.

Administrative Law—Administrative acts or decisions—Educational officers—Headmasters Secondary Education—Transfers within the same town not entailing any change of their statuts—Are internal measures of administration which cannot be challenged by a recourse under Article 146 of the Constitution.

Constitutional Law—Recourse under Article 146 of the Constitution—Judgment of the Supreme Court in such a recourse—Orders compelling active compliance with—Could not have been granted on the basis of Articles 146.4 and 5 and 150 of the Constitution or on the basis of any

other provision of the Constitution or relevant principles of Law.

Contempt of Court—Revisional jurisdiction—Failure or refusal of the Administration to comply with a judgment of a single Judge of the Supreme Court—Power to punish for contempt vests in such single Judge—Article 150 of the Constitution and sections 9(a), 11(1) and (2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64).

Practice—Recourse against transfer—Interested party transferred to the school to which applicant had applied to be transfered—Properly treated as an interested party.

On the 8th June, 1983, the respondent applied to be posted as from the school-year 1983-1984 as Headmistress at the Makarios "C" Gymnasium in Nicosia, having served eversince 1968 as the headmistress of the Phaneromeni "A" Gymnasium in Nicosia. Her application was on the same day initialled by the Head of Department of Secondary Education, who made a note on it that he had taken cognizance of it; but the respondent was never given a reply to her application. On the 16th July, 1983 the Minister of Education, on the basis of a proposal of the Director of the Department of Secondary Education, which had been made to the Minister on the same date with the concurrence of the Director-General of the Ministry, decided to transfer 10 Headmasters, serving at secondary schools in the Nicosia area during the school-year 1982-1983 to other secondary schools again in the Nicosia area, as from the beginning of the school-year 1983-1984. One of such headmasters was interested party Prodromou who was transferred to the Makarios "C" Gymnasium' which was the school to which respondent had requested to be transferred. Upon a recourse by the respondent the trial Judge annulled the transfers of the above ten headmasters and hence appeal 336.

Following the annulment of the transfers the applicant applied and obtained on 29.11.1983 a declaration that the respondents failed to implement the decision of the Court. And hence appeal 344. They, also, applied for the committal of the Director of Secondary Education for refusal

or failure to comply with the annulling judgment of the Supreme Court and with the judgment of 29.11.1983; and the trial Judge held that it had competence to deal with the application for contempt. Hence appeal 354.

Held, (1) on Appeal 336:

That the transfers of all the Headmasters, except that of Prodromou, who was transferred to the school to which respondent had requested to be transferred could not have been regarded as having adversely and directly affected any legitimate interest of the respondent, in the sense of Article 146.2 of the Constitution; and that, consequently, such transfers could not have been challenged by means of the recourse in question of the respondent and, therefore, they could not have been annulled by the trial Judge; and, for this reason, this appeal succeeds in any event and is allowed in so far as are concerned the transfers of all the other headmasters except Prodromou.

(2) That this Court cannot agree that the application of the respondent ought to have been placed before the Minister of Education so that he could decide himself whether or not to grant it because it cannot construe regulation 14(1) of the Educationalists (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972 as requiring the Minister of Education to take personal cognizance of every application for a transfer and to decide on it on his own; that, moreover, having in mind the definitions of "appropriate authority" ("αρμοδία αρχή") and of "Minister" ("Υπουργός") in section 2 of the Public Educational Service Law, 1969 (Law 10/69), which have to be read together, this Court is of opinion that for the purposes of Law 10/69 the "Appropriate authority" is the Minister of Education, acting usually through the Director-General of the Ministry of Education, and that the notions of Minister of Education and Ministry of Education have to be understood as including, also, every Department of such Ministry and, consequently, as including, too, every Head of Department in the Ministry of Education (in this respect Law 10/69 differs from the Public Service Law, 1967 (Law 33/67)); and that, therefore, the matter of the applied for by her transfer of the respondent could, like any other

transfer of the same nature, be dealt with by means of a decision of the Head of Department of Secondary Education under section 39(2) of Law 10/69.

Held, further, that though it may reasonably be said that interested party Prodromou was not transferred to the Makarios "C" Gymnasium in preference and instead of the applicant after a comparison of their respective merits, since the said interested party was transferred to the secondary education school to which the applicant had applied to be transferred he was properly treated as an interested party in the proceedings which were set in motion by the recourse of the respondent.

(3) That viewing the decision of the Head of Department of Secondary Education in relation to the application for transfer of the respondent in the light of all relevant material* which is now before the Court and which, in the normal course of events, must have been before the said Head of Department at the material time, it was reasonably open to the Head of Department of Secondary Education to decide that it was in the interests of education not to transfer as yet the respondent from the Phaneromeni "A" Gymnasium; and that, consequently, this Court cannot agree with the respondent that the application for transfer was, eventually, refused without due inquiry or without sufficient reasoning.

Held, further, (A) that the respondent cannot succeed on her contention that, contrary to Article 29 of the Constitution, she has not been given a reply in relation to her application for transfer, because, once she has made a recourse regarding the substance of the matter of her transfer, she is precluded from complaining in a recourse, like her present one, against the failure to reply to her, unless

* The said material comprised the decision (No. 22908) of the Council of Ministers, dated 17th March 1983, regarding the restructuring of the schools of secondary education, together with the relevant submission to the Council of Ministers and the documents attached thereto, as well as the personal files of the respondent and of interested party Prodromou, including the letters which were addressed to the respondent as headmistress of the Phaneromeni «A» Gymnasium by the ex-Minister of Education, Mr. N. Konomis, and by officials of the Ministry of Education, congratulating her about the excellent work which she had been doing as headmistress of the Gymnasium.

she can prove that she suffered material detriment as a result of such failure, and this is not so in this instance.

(B) That, in order that respondent would have been entitled to complain of a breach of Article 29, on the ground that no reply was given to her application for transfer, the decision whether or not to transfer her should have been a decision which could be made the subject-matter of a recourse under Article 146.1 of the Constitution; and that the refusal to transfer the respondent, as well as the decision to transfer interested party Prodromou, are, in the light of all the particular circumstances* of the present case, internal measures of administration, which cannot be challenged by a recourse under Article 146; accordingly appeal 336 has to be allowed and, consequently, the recourse of the respondent has to be dismissed.

Held, (II) *on appeal 344:*

That the relevant powers of the Court are exhaustively set out in paragraphs 4 and 5 of Article 146 and Article 150 of the Constitution; that only paragraph 4 of Article 146 of the Constitution provides about the remedies to be granted in a recourse under such Article; and paragraph 5 of Article 146 does not provide for a separate or additional remedy, but can only be invoked and applied in relation to an application for punishment for contempt of Court under Article 150 of the Constitution; that the relief which had been claimed by the application of the respondent, namely orders compelling active compliance with, and obedience to, the first instance judgment given in recourse 311/83, could not have been granted on the basis of Articles 146.4 and 5 and 150 or on the basis of any other provision of the Constitution or relevant principles of Law; accordingly Appeal 344 must be allowed.

Held, (III) *On Appeal 354:*

That the trial Judge has competence, even when sitting on his own, to entertain an application asking him to punish the non-compliance with his judgment of the 14th

* One such circumstance was that the sub judice transfers did not entail a change of status of the headmasters concerned.

October 1983, assuming that such non-compliance was established to exist (see Article 150 of the Constitution and sections 9(a), 11(1) and 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (33/64); accordingly Appeal 354 must be dismissed.

Held, further, that in view of the successful outcome of appeals R. As 336 and 344 the said application for punishment for contempt may have been deprived of its subject-matter.

Appeals 336, 344, allowed.
Appeal 354 dismissed.

Cases referred to:

Kyriakides v. *The Republic,* 1 R.S.C.C. 66;

Pitsillos v. *Cyprus Broadcasting Corporation* (1981) 3 C.L.R. 614 at p. 619; (1982) 3 C.L.R. 208;

Pitsillos v. *The Municipality of Nicosia* (1982) 3 C.L.R. 754 at p. 762;

Xenophontos v. *The Republic,* 2 R.S.C.C. 89 at p. 92;

Pitsillos v. *Minister of Interior* (1971) 3 C.L.R. 397 at p. 399;

Yialousa Savings Bank Ltd. v. *The Republic* (1977) 3 C.L.R. 25 at pp. 31, 32, 33;

Yiallourou v. *The Republic* (1976) 3 C.L.R. 214 at pp. 220, 221;

Karapataki v. *The Republic* (1982) 3 C.L.R. 88 at p. 94;

Sofocleous (No. 1) v. *The Republic* (1972) 3 C.L.R. 56;

Kyriakopoulou v. *The Republic* (1973) 3 C.L.R. 1;

Sofocleous v. *The Republic* (1974) 3 C.L.R. 63;

Karayiannis v. *The Republic* (1974) 3 C.L.R. 420;

Michaeloudes v. *The Republic* (1979) 3 C.L.R. 56;

Prodromou v. *The Republic* (1981) 3 C.L.R. 38.

Appeals.

Appeals against the judgments of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 14th October, 1983, 29th November, 1983 and 1st December, 1983 (Revisional Jurisdiction Case No. 311/83)* whereby the refusal of the appellant to transfer the respondent Nissiotou was annulled and it was further ordered that the appellant was dutybound to give effect to the above judgment and that the Court had jurisdiction to take cognizance of an application for the committal for contempt of the Director of Secondary Education.

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

A. S. Angelides, for the respondent.

L. Papaphilippou with *Ph. Valiantis,* for interested party *C. Carayiannis* in R.A. 354 and an interested party in R.A. 336.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. These three revisional jurisdiction appeals arose out of first instance proceedings before a Judge of this Court in recourse No. 311/83, under Article 146.1 of the Constitution, which was filed by Ivi Nissiotou, the respondent in R. As. 336 and 344 (to be referred to hereinafter as "the respondent"), against the appellant Ministry of Education.

In view of their correlated nature we propose to deliver now one judgment in relation to all of these appeals.

By her said recourse (311/83) the respondent was, in effect, seeking a declaration that the refusal of the appellant Ministry to transfer her, as a headmistress, from the school-year 1983-1984, from the Phaneromeni "A" Gymnasium in Nicosia to the Makarios "C" Gymnasium in Nicosia should be annulled. She was, furthermore, complaining that her claim for transfer had to be given priority over the transfers to various other secondary schools in Nicosia of ten headmasters of secondary education, one of whom

* Reported in (1983) 3 C.L.R. 974, 1483 and 1498.

is C. Carayiannis, an interested party in R. A. 336 and the respondent in R. A. 354, and another of whom is G. Prodromou, who was transferred to the Makarios "C" Gymnasium. All the aforementioned headmasters were serving at secondary schools in the Nicosia area during the school-year 1982-1983 and were transferred to other secondary schools, again in the Nicosia area, as from the beginning of the school-year 1983-1984.

The learned trial Judge, who dealt, in the first instance, with the recourse of the respondent, annulled, in so far as the respondent and the other ten headmasters were concerned, a decision which had been taken by the Minister of Education on the 16th July 1983, on the basis of a proposal of the Director of the Department of Secondary Education in the Ministry of Education, which had been made to the Minister on that same date with the concurrence of the Director-General of the said Ministry.

We take it that, as the respondent is not expressly referred to in the said decision, the trial Judge treated it as amounting, in effect, to a refusal of her application for transfer and that is why he annulled such decision in so far also as the respondent is concerned.

The aforesaid other ten headmasters were joined as interested parties on the initiative of counsel for the respondent. In the circumstances, however, of this case we have reached the conclusion that the transfers of all of them, except that of G. Prodromou, could not have been regarded as having adversely and directly affected any legitimate interest of the respondent, in the sense of Article 146.2 of the Constitution. Consequently, such transfers could not have been challenged by means of the recourse in question of the respondent and, therefore, they could not have been annulled by the trial Judge; and, for this reason, this appeal succeeds in any event and is allowed in so far as are concerned the transfers of all the other headmasters except Prodromou.

Before we deal further with the other issues arising in R. A. 336 it is useful to refer, at this stage, to certain salient facts:

On the 8th June 1983 the respondent applied to be posted

as from the school-year 1983-1984 as headmistress at the Makarios "C" Gymnasium in Nicosia, having served ever since 1968 as the headmistress of the Phaneromeni "A" Gymnasium in Nicosia.

As it appears from the Opposition which was filed in answer to her recourse (311/83) her application was not treated as an application for a transfer and was not dealt with as such at all because the respondent had used in her application the expression "posting" instead of "transfer" and because the view was taken—(in the light of the Educationalists (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972, see No. 205 in the Third Supplement, Part 1, to the Official Gazette of the 10th November 1972)—that no question of posting the applicant had arisen as she was not an educationalist who had been appointed for the first time; and the respondent was never given a reply to her said application.

Later on, by virtue of the aforementioned decision of the Minister of Education, of 16th July 1983, interested party G. Prodromou was posted as a headmaster at the Makarios "C" Gymnasium, that is at the secondary education school to which the respondent had requested to be transferred by her application of 8th June 1983.

Though it may reasonably be said that interested party Prodromou was not transferred to the Makarios "C" Gymnasium in preference and instead of the applicant after a comparison of their respective merits, we are, nevertheless, inclined to the view that since the said interested party was transferred to the secondary education school to which the applicant had applied to be transferred he was properly treated as an interested party in the proceedings which were set in motion by the recourse of the respondent.

Moreover, we are of the view that though initially the application of the respondent for a transfer was not considered as such, because of the mistaken view that it was only an application for posting, nevertheless such application was, eventually, impliedly refused in the course of the administrative process leading up to the decision for the

transfers of other headmasters of secondary education in Nicosia, which was taken, as aforesaid, on the 16th July 1983.

It must be noted, in this respect, that the application of the respondent for transfer appears to have been received in the Ministry of Education on the 10th June 1983 and it was on the same day initialled by the Head of Department of Secondary Education, who made a note on it that he had taken cognizance of it. So, by virtue of the presumption of regularity, it must be assumed that he had it in mind when he decided to recommend to the Minister of Education on the 16th July 1983 those who were to be transferred as from the beginning of the next school-year, 1983-1984, and, in particular, when he recommended the transfer of interested party Prodromou to the Makarios "C" Gymnasium, where the respondent wished to be transferred; and, thus, it can be safely presumed that he decided to refuse the respondent's application for a transfer to that Gymnasium.

We cannot agree that the said application of the respondent ought to have been placed before the Minister of Education so that he could decide himself whether or not to grant it, because we cannot construe regulation 14(1) of the aforementioned Regulations of 1972 as requiring the Minister of Education to take personal cognizance of every application for a transfer and to decide on it on his own.

Moreover, having in mind the definitions of "appropriate authority ("αρμοδία αρχή") and of "Minister" ("Υπουργός") in section 2 of the Public Educational Service Law, 1969 (Law 10/69), which have to be read together, we are of the opinion that for the purposes of Law 10/69 the "appropriate authority" is the Minister of Education, acting usually through the Director-General of the Ministry of Education, and that the notions of Minister of Education and Ministry of Education have to be understood as including, also, every Department of such Ministry and, consequently, as including, too, every Head of Department in the Ministry of Education. In this respect Law 10/69 differs from the Public Service Law, 1967 (Law 33/67), because in Law 33/67 there is to be found, in section 2, only the definition that the term "Ministry" includes any Department

under a Ministry, but there is no definition of the term "Minister", as in section 2 of Law 10/69, stating that the "Minister" is to be understood as meaning, also, every Department of the Ministry of Education and, by necessary implication, as including, too—as already stated—the Head of every such Department.

In the light of the foregoing we are of the view that the matter of the applied for by her transfer of the respondent could, like any other transfer of the same nature, be dealt with by means of a decision of the Head of Department of Secondary Education under section 39(2) of Law 10/69; and, actually, the respondent's application for transfer must be treated as having been so dealt with, and refused, by the said Head of Department when he decided which other transfers to recommend to the Minister of Education, even though, as already indicated, the Head of Department of Secondary Education could also have decided about such transfers himself.

The decision, as aforesaid, of the Head of Department of Secondary Education in relation to the application for transfer of the respondent must be viewed in the light of all relevant material which is now before the Court and which, in the normal course of events, must have been before the said Head of Department at the material time; and such material comprises the decision (No. 22908) of the Council of Ministers, dated 17th March 1983, regarding the restructuring of the schools of secondary education, together with the relevant submission to the Council of Ministers and the documents attached thereto, as well as the personal files of the respondent and of interested party Prodromou, including the letters which were addressed to the respondent as headmistress of the Phaneromeni "A" Gymnasium by the ex-Minister of Education, Mr. N. Konomis, and by officials of the Ministry of Education, congratulating her about the excellent work which she had been doing as headmistress of that Gymnasium. It was, therefore, reasonably open to the Head of Department of Secondary Education to decide that it was in the interests of education not to transfer as yet the respondent from the Phaneromeni "A" Gymnasium.

We, consequently, cannot agree with the respondent that her application for transfer was, eventually, refused without due inquiry or without sufficient reasoning.

Before concluding this part of our judgment we should observe that the respondent cannot succeed on her contention that, contrary to Article 29 of the Constitution, she has not been given a reply in relation to her application for transfer, because, once she has made a recourse regarding the substance of the matter of her transfer, she is precluded from complaining in a recourse, like her present one, against the failure to reply to her, unless she can prove that she suffered material detriment as a result of such failure, and this is not so in this instance (see, inter alia, in this respect, *Kyriakides* v. *The Republic,* 1 R.S.C.C. 66, and subsequent case-law which is referred to in *Pitsillos* v. *Cyprus Broadcasting Corporation,* (1981) 3 C.L.R. 614, 619, and, on appeal, *Pitsillos* v. *Cyprus Broadcasting Corporation,* (1982) 3 C.L.R. 208, as well as *Pitsillos* v. *The Municipality of Nicosia,* (1982) 3 C.L.R. 754, 762).

Furthermore, in order that respondent would have been entitled to complain of a breach of Article 29, on the ground that no reply was given to her application for transfer, the decision whether or not to transfer her should have been a decision which could be made the subject-matter of a recourse under Article 146.1 of the Constitution (see, in this respect, inter alia, *Xenophontos* v. *The Republic,* 2 R.S.C.C. 89, 92, *Pitsillos* v. *The Minister of Interior,* (1971) 3 C.L.R. 397, 399 and *Yialousa Savings Bank Ltd.* v. *The Republic,* (1977) 3 C.L.R. 25, 31, 32, 33); and we are of the opinion that the refusal to transfer the respondent, as well as the decision to transfer interested party Prodromou, are, in the light of all the particular circumstances of the present case, internal measures of administration, which cannot be challenged by a recourse under Article 146 (see, inter alia, in this respect, *Yiallourou* v. *The Republic,* (1976) 3 C.L.R. 214, 220, 221, and *Karapataki* v. *The Republic,* (1982) 3 C.L.R. 88, 94). It is to be noted in this connection that it was common ground at the trial of the present recourse that the transfers of headmasters which were decided, as aforesaid, on the 16th July 1983, did not entail a change in their status; and, in our opinion, this was rightly thought to be the correct po-

sition because, notwithstanding any other differences between a Gymnasium and a Lyceum, it cannot be said that there is any substantial difference as regards the status of headmasters who are in charge of schools of secondary education of either of the said two types.

Of course, in the present judgment we need, and will, not deal exhaustively with the question of whether or not transfers effected under section 39(2) of Law 10/69 are always to be treated as internal measures of administration; and, indeed, there have been in our case-law occasions on which such transfers were subjected to judicial scrutiny because the Supreme Court was invited to deal with their merits without there having been raised any objection that their validity could not be challenged by means of a recourse under Article 146 because they were internal measures of administration; and it is not for us to decide now, ex post facto, whether in each one of those instances the transfer which was made the subject-matter of a recourse was or was not an internal measure of administration (see, inter alia, in this respect, *Sofocleous (No. 1)* v. *The Republic*, (1972) 3 C.L.R. 56, *Kyriakopoulou* v. *The Republic*, (1973) 3 C.L.R. 1, *Sofocleous* v. *The Republic*, (1974) 3 C.L.R. 63, *Karayiannis* v. *The Republic*, (1974) 3 C.L.R. 420, *Michaeloudes* v. *The Republic*, (1979) 3 C.L.R. 56 and *Prodromou* v. *The Republic*, (1981) 3 C.L.R. 38).

For all the foregoing reasons appeal R. A. 336 has to be allowed and, consequently, the recourse of the respondent (311/83) has to be dismissed.

We shall deal next with the outcome of appeal R.A. 344:

We have carefully considered the decision of the trial Judge in relation to an application which was made by the respondent, Nissiotou, as the successful applicant in her recourse 311/83.

We do share fully the anxiety of the trial Judge that there should be due compliance with the judgments of all Courts and, particularly, as in this case, with judgments given in relation to recourses under Article 146.

We have reached, however, the conclusion, in the light, inter alia, of the arguments advanced by counsel for the

parties to this appeal, that the relevant powers of the Court are exhaustively set out in paragraphs 4 and 5 of Article 146 and Article 150 of the Constitution, which read as follows:

«ΑΡΘΡΟΝ 146

. . . . . .

4 Επί τοιαύτης προσφυγής το δικαστήριον δύναται, διά της αποφάσεως αύτου:

(α) να επικυρώση, εν όλω ή εν μέρει, την τοιαύτην απόφασιν ή πράξιν ή παράλειψιν· ή

(β) να κηρύξη την απόφασιν ή την πράξιν, εν όλω ή εν μερει άκυρον και εστερημένην οιουδήποτε αποτελεσματος η

(γ) να κηρύξη την παράλειψιν εν όλω ή εν μέρει άκυρον και ό,τι παν το παραλειφθέν έδει να είχεν εκτελεσθή.

5 Η κατά την τετάρτην παράγραφον του παρόντος άρθρου απόφασις δεσμεύει παν δικαστήριον, όργανον ή αρχήν εν τη Δημοκρατία, και τα περί ων πρόκειται όργανα, αρχαί ή πρόσωπα υποχρεούνται εις ενεργόν συμμόρφωσιν προς ταύτην».

("ARTICLE 146

4. Upon such a recourse the Court may, by its decision-

(a) confirm, either in whole or in part, such decision or act or omission; or

(b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or

(c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.

5. Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon the organ or authority or person concerned").

«ΑΡΘΡΟΝ 150

Τὸ Ἀνώτατον Συνταγματικὸν Δικαστήριον κέκτηται *δικαιοδοσίαν νὰ ἐπιβάλλῃ ποινὰς ἕνεκεν περιφρονήσεως* τοῦ Δικαστηρίου τούτου».

("ARTICLE 150

The Supreme Constitutional Court shall have jurisdiction to punish for contempt of itself").

In our opinion only paragraph 4 of Article 146 of the Constitution provides about the remedies to be granted in a recourse under such Article; and paragraph 5 of Article 146 does not provide for a separate or additional remedy, but can only be invoked and applied in relation to an application for punishment for contempt of Court under Article 150 of the Constitution.

Nor can we hold that the relief which had been claimed by the aforementioned application of the respondent, namely orders compelling active compliance with, and obedience to, the first instance judgment given in recourse 311/83, could have been granted on the basis of any other provision of the Constitution or relevant principle of law.

We have, therefore, to allow appeal R.A. 344 and to set aside the decision which has been challenged by means of it.

We have not found to be necessary to pronounce on the issue of whether or not there has been disobedience of the judgment which was delivered by the trial Judge in recourse 311/83 on the 14th October 1983 because it has been set aside by allowing R.A. 336. We should point out, however, that, having looked at the relevant evidence of the Head of Department of Secondary Education in the Ministry of Education, Mr. L. Koullis, which was found to be unreliable by the trial Judge, we are of the view that it is most probable that the reasons which led the trial Judge

to hold that such testimony was unreliable are attributable to bona fide lack of recollection on the part of the witness and not to any intention of his mislead the Court by false testimony. It is to be noted, too, in this respect, that counsel for the appellant and counsel for the respondent have both stated categorically that they are not contending that Mr. Koullis lied on his oath.

We shall deal next and lastly, with appeal R.A. 354:

We do share the view of the learned trial Judge that he is competent, even when sitting on his own, to entertain an application asking him to punish the non-compliance with his judgment of the 14th October 1983, assuming that such non-compliance is established to exist.

The reasons for our above view are as follows:

Under Article 150 of the Constitution the Supreme Constitutional Court has jurisdiction to punish for contempt of itself; and, of course, one form of contempt is non-compliance with its judgments.

The said competence of the Supreme Constitutional Court was vested in the Supreme Court by virtue of section 9(a) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64) and it is exercisable by the Full Bench of the Supreme Court under section 11(1) of Law 33/64, subject to the provisions, inter alia, of subsection (2) of section 11 of the same Law.

Once, under the said subsection (2) of section 11, a Judge of this Court exercises in the first instance the revisional jurisdiction which is vested in the Supreme Constitutional Court under Article 146 of the Constitution, and which has been vested in the Supreme Court by virtue of section 9(a) of Law 33/64, it follows that, at the first instance level, and subject to an appeal in accordance with the proviso to subsection (2) of section 11, a Judge of this Court should possess, for the sake of the proper and complete exercise of the jurisdiction under Article 146, the competence under Article 150 of the Constitution, for the purpose of punishing for contempt in case of non-compliance with a first instance judgment given by him under Article 146, or for any other contempt of Court impeding,

or interfering with, in any way, the exercise by him of the jurisdiction under Article 146, at the first instance level.

Consequently, the trial Judge in this case had competence to deal with the application for punishment for contempt of Court which was filed on 1st December 1983 and by means of which he is asked to impose such punishment for alleged non-compliance with his judgment in case 311/83, which he delivered on 14th October 1983, and with his decision in the same case which he gave on 29th November 1983.

As a result appeal R. A. 354 has to be dismissed.

We might observe, however, that, in view of the successful outcome of appeals R. As 336 and 344 the said application for punishment for contempt may have been deprived of its subject-matter.

Bearing in mind all relevant considerations we have decided not to make any order as to the costs of all the three appeals which have been determined by means of this judgment.

Appeals 336, 344 allowed.
Appeal 354 dismissed.