

1985 April 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LAMBROS EFSTATHIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COMMANDER OF POLICE,
2. THE MINISTER OF INTERIOR,

Respondents.

(Case No. 555/83).

Administrative Law—Administrative acts or decisions—Annulment—It entails their abrogation and disappearance in Law—Administration under a duty to examine matter afresh by reference to the legal and factual background obtaining at the time the annulled decision was taken—Annulment of dismissal of Police Constable—His association with Police Force not severed by the annulment—He could be tried disciplinarily anew—No breach of the rule of res judicata—Article 146.5 of the Constitution.

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The applicant, a police sergeant, was dismissed from the police force after he was found guilty on a disciplinary charge of failing to report for duty without excuse. The dismissal of the applicant was annulled for breach of the fundamental right to be heard before being punished safeguarded by Art. 12 of the Constitution.

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Following a fresh hearing into the charge of failure to report for duty without excuse he was again found guilty and the sentence of compulsory retirement was imposed upon him. Hence this recourse.

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Counsel for the applicant mainly contended:

(a) That the Police Force had no competence to put the

applicant afresh on trial on account of severance of his tie with the force.

- (b) That there was breach of the rule of *res judicata* because the outcome of the first recourse, annulling his dismissal, estopped the respondents from prosecuting him on the same disciplinary charge. 5

Held, (1) that the annulment of an administrative act by a Court of competent jurisdiction entails its abrogation and disappearance in Law (see Article 146.5 of the Constitution); that upon the annulment of an administrative act or decision, the Administration comes under a duty to examine the matter afresh by reference to the legal and factual background obtaining at the time the annulled decision was taken; and that, consequently, the annulment of the dismissal of the applicant, far from severing his association with the police force, it reaffirmed it in the most authoritative way. 10 15

(2) That by putting the applicant on trial anew the respondents have not acted in breach of the rule of *res judicata* because, as in every other area, annulment of disciplinary conviction merely erases the decision and causes its disappearance in Law; and that, thereafter, the duty of the Administration is to hold a fresh hearing into the disciplinary charge unfettered by the annulled decision. 20

Recourse dismissed. 25

Cases referred to:

Avgoustis v. Republic (1985) 3 C.L.R. 626;

Pieris v. Republic (1983) 3 C.L.R. 1054;

Christodoulou v. Republic (1984) 3 C.L.R. 865.

Recourse. 30

Recourse against the sentence of compulsory retirement passed on applicant after his conviction of a disciplinary charge of failing to report for duty without excuse.

A. Eftychiou, for the applicant.

N. Charalambous, Senior Counsel of the Republic,
for the respondents.

Cur. adv. vult.

5 PIKIS J. read the following judgment. The applicant, a
police sergèant, was dismissed from the police force after
he was found guilty on a disciplinary charge of failing to
report for duty without excuse; while his leave of absence
expired on 29th August, 1979, he failed to return to his
10 duties. The dismissal of the applicant was annulled for
breach of the fundamental right to be heard before being
punished safeguarded by Art. 12 of the Constitution (1).
It is unnecessary, for the purposes of this judgment, to
refer to the earlier history of the proceedings or the cir-
cumstances under which applicant overstayed his leave of
15 absence that founded the disciplinary charge against him.
Of interest is the sequel to the annulment of the decision of
the Disciplinary Board, particularly the legitimacy and pro-
priety of the proceedings that followed the annulment of his
dismissal. A fresh hearing was held into the charge of
20 failure to report for duty without excuse that resulted in
his conviction and sentence to compulsory retirement (De-
cision—3rd June, 1983). His appeal to the Chief of the
Police was dismissed shortly afterwards on 12th October,
1983. The present proceedings are directed, as indicated,
25 against the validity of this decision.

Allegedly the decision is bad for three reasons:

- 30 (1) Lack of competence on the part of the police force
to put the applicant afresh on trial on account of sever-
ance of his tie with the force. Notwithstanding the
annulment of his dismissal, the contention is that his
link with the police force remained cut.
- 35 (2) Breach of the rule of *res judicata*. The case here is
that the outcome of the first recourse, annulling his
dismissal, estopped the respondents from prosecuting
him on the same disciplinary charge.
- (3) Untenability of the charge of absence without leave

(1) The decision was given on 11th December, 1982, in Recourse 33/80.

because his leave was never revoked. Review of the history of the proceedings establishes that the charge against him was founded upon failure to return to his duties after the expiration of his leave and not on an omission to report for duty following a purported revocation of his leave. Consequently, the submission in this respect is wholly unfounded and need concern us no further. 5

We may, therefore, confine this judgment to examination of the other two complaints, namely, allegations of severance of his association with the police force with consequential inamenity to retry him disciplinarily, and secondly, the plea of *res judicata*. 10

The annulment of an administrative act by a Court of competent jurisdiction entails its abrogation and disappearance in Law. This principle is perfectly well settled obviating any need to support it by reference to authority. It is implicit in the provisions of para. 5 of Art. 146, enjoining all authorities and organs of the State, to give effect to every judicial pronouncement. 15 20

Upon the annulment of an administrative act or decision, the Administration comes under a duty to examine the matter afresh by reference to the legal and factual background obtaining at the time the annulled decision was taken. Consequently, the annulment of the dismissal of the applicant, far from severing his association with the police force, it reaffirmed it in the most authoritative way. In similar circumstances Demetriades, J. decided in a recent decision, *Avgoustis v. The Disciplinary Board* (1) that a major of the Cyprus Army (attached to the National Guard) was liable to be retried on the same charge dismissing every suggestion that he ceased to be a member of the Army. In the present case the annulment of the dismissal of the applicant, as in the case of *Avgoustis*, served to restore the status quo ante, that is, the state of affair that prevailed prior the annulled decision and as such rendered him liable to be retried on the same disciplinary charge. 25 30 35

Equally tenuous is the second submission that by putting

(1) (1985) 3 CLR 626

the applicant on trial anew the respondents acted in breach of the rule of *res judicata*, a rule that finds expression in administrative Law in the circumstances explained, *inter alia*, by the Full Bench in *Pieris v. The Republic* (1). To
5 my comprehension counsel for the applicant is confusing the implications of an annulling decision of a Court of Revisional Jurisdiction with those of a Criminal Court acquitting an accused of a criminal charge entitling him thereafter to set up a plea of *autrefois acquit* (2). As in every
10 other area, annulment of disciplinary conviction merely erases the decision and causes its disappearance in Law. Thereafter, as explained in *Christodoulou v. The Republic* (3), the duty of the Administration is to hold a fresh hearing into the disciplinary charge unfettered by the annulled
15 decision.

For the reasons briefly but hopefully convincingly explained above, the recourse is doomed to failure and as such falls to be dismissed.

20 The recourse fails, it is dismissed, with no order as to costs.

*Recourse dismissed.
No order as costs.*

(1) (1983) 3 C.L.R. 1054.

(2) See s. 69(b)—Criminal Procedure Law, Cap. 155.

(3) (1984) 3 C.L.R. 865.