1986 February 21

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PANAYIOTIS KYRIACOU AND OTHERS,

Applicants.

v.

THE MINISTER OF INTERIOR,

Respondent.

(Case No. 198/78).

Contempt of Court—Non compliance with an annulling declaratory judgment of this Court in its Revisional Jursidiction under Article 146 of the Constitution does not amount to contempt of Court—Constitution, Articles 146.5, 150 and 162—Article 146.5 does not grant an extra remedy over and above those available under Article 146.4—The jurisdiction to entertain contempt proceedings is given by Article 150— Article 150 and, to the extent applicable Article 162, refer to such judgments or orders that as of their nature, under English Common Law, entail commitment for contempt.

Contempt of Court—Civil contempt—Non-compliance with judgments or orders—The necessary prerequisites for establishing contempt—The Civil Procedure Rules, O. 42A and Order 5—The old English Rules, 0.41, r. 5—The new English Rules O. 45, r. 7(2) and r. 7(b)—The Supreme Constitutional Court Rules, 1962 rule 18—The Courts of Justice Law 14/60, s. 42 and s. 44 as amended by Law 50/62.

Constitutional Law—Constitution, Articles 146.4, 146.5, 150 and 162.

By the decision of this Court in *Eracleous and Others*

v. *The Republic* (1985) 3 C.L.R. 740 the promotions of all 413 interested parties in that case to the rank of Sergeant in the Police Force as from the 20.2.78 were annulled. The said decision was delivered on the 20.3.85. On the recommendation of the Chief of the Police and with the approval of the Minister of Interior the said 413 persons were promoted again on the 17.6.85 to the rank of sergeant, retrospectively as from 15.2.78.

During the period between the day, when the said annulling decision was issued and the day, when the said 413 interested parties were once again promoted to the rank of sergeant, the Chief of Police considered that "during the whole operation of the administrative process", explained in his affidavit*, "the cohesion, discipline and the orderly function of the Force as well as the maintenance of the hierarchy, required the preservation of the status quo, that is temporarily not to take the rank of Sergeant from the interested parties until the full regulation of the whole subject".

It should be noted that the respondent received copy of the annulling judgment by double registered letter dated 8.5.85 and that he was informed by his counsel about the said judgment on the day it was delivered.

By the present application the applicants seek:

(a) An order of the Court ordering the imprisonment of the Chief of Police for contempt of Court.

(b) Judgment and/or declaration of the Court that the continued forbearance and/or consent of the Chief of Police that the interested parties bear the rank of a Sergeant constitutes contempt of Court.

Held, dismissing the recourse (1) There should be due compliance with the judgments or orders of all Courts, otherwise the administration of justice cannot be effective. It is a contempt to disobey a judgment or order either to do a specific act within a specified time or to abstain from doing a specific act. In Cyprus povision exists both

* The affidavit filed by the Chief of Police is quoted at pp. 307-308 post.

in the Constitution and in various enactments giving the Courts jurisdiction to punish for contempt. Articles 150 and 162 of the Constitution provide that the Supreme Constitutional Court and the High Court respectively have jurisdiction to punish for contempt of themselves.

There is obviously a difference in those two provisions inasmuch as in Article 150 there is no provision to commit to prison any person disobeying a judgment or order as there is in Article 162, for the High Court and its subordinate Courts.

By the merger of the two Courts (The Supreme Constitutional Court and the High Court) under the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964), these two Articles must be taken to refer to the present Supreme Court that delivered the judgment in question, and be applicable as the case may be to the matters falling within the respective jurisdiction of the Supreme Court.

Other provisions relevant to the issue of contempt are s. 42 and 44 of Law 14/60 as amended by Law 50/62. Compliance is also required in respect of judgments given in relation to recourses under Article 146 of the Constitution. Article 146.5 reads:

> "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 by the organ or authority or person concerned."

(2) Article 146.5 does not grant an extra remedy to an applicant over and above those available under Article 146.4 of the Constitution. Nor does it on its own empower him to enforce a judgment or to proceed for contempt. The jurisdiction to entertain contempt proceedings is given by Article 150.

(3) The position in Greece is that the matter of contempt of declaratory decisions of the Council of State is specifically provided for by law and it is of a punitive

character. It is, therefore, of no help, as it cannot be applied to cases in Cyprus.

(4) In order to hold that a person has committed contempt certain prerequisites have to be satisfied: Firstly it must be established that the terms of the order or judgment are clear and unambiguous; secondly it must be shown that the respondent has had proper notice of such terms; and thirdly, there must be clear proof that the terms have been broken by the respondent.

(5) It is the contention of counsel for the respondent that the Chief of Police has not received proper notice of the annulling decision because the requirements of Order 42A* of the Civil Procedure Rules have not been compiled with. The language of the order is mandatory, "there shall be endorsed", "shall be served".

According also to the language of the order, it applies where there is an order or judgment issued by any Court directing "any act to be done or prohibiting the doing of any act."; in other words it applies to orders or judgments the effect of which is mandatory or prohibitive.

In the present case assuming that the said Order 42A applies to declaratory judgments, the requirements set out in Order 42A as regards proper service of the judgment, have not been complied with. There has not been personal service as such is defined by Order 5 of our Civil Procedure Rules, as service by letter double registered or otherwise is considered in rule 9 thereof as substituted service and not personal. Secondly, the respondent was not served with a properly indorsed copy of the judgment with the appropriate notice as is provided by Order 42A, rule 1.

The effect of rule 18 of the Supreme Constitutional Court Rules is that the Civil Procedure Rules are deemed to apply mutatis mutandis to proceedings in the Supreme Court in its Revisional Jurisdiction. Hence since there is a clear requirement of proper service which was not

* Order 42A is quoted at pp. 316-317 post.

complied with the jurisdiction of the Court under Order 42A cannot be invoked and thus there can be no committal for contempt.

(6) The decision of the Court in its revisional jurisdiction takes the form of a declaration and the binding effect of such declaration is provided by Article 146.5. The obligation, therefore to comply stems from the Constitution and not from the judgment itself which does not have the nature of an injunction, either mandatory or prohibitory, which is a most solemn and authoritative form of order made by a Court expressly enjoining a party to do or refrain from doing a particular act. Nor is this case one of the instances in which civil contempt may be invoked. It follows that failure to comply with the provisions of Article 146.5 of the Constitution cannot amount to contempt.

The powers of the Court under Article 150 of the Constitution and, to the extent applicable, Article 162 must be read as referring to such decisions or judgments or orders that as of their nature do, under English Common Law, entail commitment for contempt. The disobedience of the provisional order issued in the *Ioaanides* v. *The Republic* (1971) 3 C.L.R. 8 is an example of such an instance of Article 150 being applicable.

(7) Motive while not relevant in establishing a case of contempt is important from the point of view of mitigating the contempt.

Application dismissed.
No order as to costs.

Cases referred to:

The Republic v. *Nissiotou* (1985) 3 C.L.R. 1335;

Husson v. *Husson* [1962] 3 All E.R. 1056;

Mouzouris and Another v. *Xylophagou Plantations Ltd.* (1977) 1 C.L.R. 287;

Ioannides v. *The Republic* (1971) 3 C.L.R. 8;

Daskalopoulos v. *Ottoman Bank* (No. 4), 14 C.L.R. 227;

McIlraith v. *Grady* [1963] 1 Q.B. 648;

Nissiotou v. *The Republic* (1983) 3 C.L.R. 1498;

Harding v. *Tingey* (1864) 12 W.R. 684;

Christodoulides v. *The Police* (1985) 2 C.L.R. 260;

Webster v. *Southwark London Borough Council* [1983] 2 W.L.R. 217.

Application.

Application by applicants for an order of the Court ordering the imprisonment of the Chief of Police for contempt of Court.

P. Angelides, for the applicants.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present application the applicants seek:

(a) An order of the Court ordering the imprisonment of the Chief of Police for contempt of Court.

(b) Judgment and/or declaration of the Court that the continued forbearance and/or consent of the Chief of Police that the interested parties bear the rank of a Sergeant constitutes contempt of Court.

The application is based on sections 42, 44 of the Courts of Justice Law 1960, (Law No. 14 of 1960), Articles 146.5, 162 of the Constitution, section 9 of the Police Law Cap. 285, as amended and the Inherent Powers of the Court.

In support of the said application an affidavit was filed sworn on the 29th May, 1985, by the applicant in Recourse No. 198/78, in which it is stated that in spite of the annulling decision of the Court delivered on the 20th March, 1985, the respondent Chief of Police allowed and/or consented that the interested parties continue to bear the rank of Sergeant, they are paid as Sergeants and perform police and administrative duties as such. By para-

graph 4 thereof, it was claimed that by the noncompliance of the Chief of Police to the judgment of the Court the disturbance of order in the Police Force is threatened and there is confusion as to the legality of certain orders.

By the judgment in question, reported as *Andreas Eracleous and Others* v. *The Republic* (1985) 3 C.L.R. 740, the sub judice decisions regarding the promotion to the rank of Sergeant of all interested parties—413 in all—set out in the Weekly Orders of the 20th February 1978, under Notification 109 were annulled. In fact the prayer for relief sought by the said recourses was for "a declaration of the Court that the acts and/or decisions of the respondents to promote and/or place the interested parties as from the 15th February 1978, to the rank of Sergeant in the Police Force of Cyprus, instead of them, was null and void and with no legal effect".

After delivery of the said judgment an application was filed on the 8th May, by several of the interested parties whose promotion had been annulled, seeking thereby an order of the Court to annul and/or set aside its judgment, on the ground that they had not had any notice or knowledge by service of the recourse, or otherwise that their promotion had been challenged and/or its annulment was sought through a recourse in the Supreme Court.

This application which was opposed by several of the respondents was ultimately withdrawn on the 20th September 1985.

According to the affidavit of the Chief of Police Mr. Savvas Antoniou filed in the present proceedings, the 413 interested parties, the promotions of which had been so annulled, were promoted again on the 17th June, 1985, on his recommendation and with the approval of the Minister of Interior, retrospectively as from the 15th February, 1978, after re-examination of the subject in the light and in compliance to the said judgment of the Supreme Court.

With regard to the three months period which passed until the full compliance to the annulling judgment of the Court the following reasons are given in paragraph 4, of this affidavit:

"4 (a) After the judgment of the 20th March, 1985, I considered that before proceeding with any action I needed legal advice. For that purpose on two instances (4th and 9th April 1985) I asked advice from the Office of the Attorney General of the Republic which I received on the 16th April 1985.

(b) On the basis of the said advice and the annulling judgment I began thereafter the re-examination of the matter of the promotions of the Police Constables to 413 posts of Sergeant and on the 2nd May 1985, I addressed a letter to the Minister of Interior by which I was asking his approval for their re-promotion.

(c) In the meantime on the 22nd May, 1985, the expected judgment of the Supreme Court in Recourse No. 1/85 was published, by which there were declared as null the Promotions (Amendment) Regulations which were issued after the enactment of Law No. 29 of 1966 on the basis of section 10 of the Police Law and it transpired that the question of the promotion of Police Constables to Sergeants was in law affected. This rendered necessary the submission of a new question on my part to the Office of the Attorney General of the Republic whose advice I received on the 13th June, 1985, and on the 17th June, I addressed a supplementary letter to the Minister of Interior who on the same day gave his approval for re-promotion of the same 413 Police Constables to Sergeants retrospectively from the 15th February 1985.

(5) During the whole operation of the administrative process which I explained above I considered that the cohesion, discipline and the orderly function of the Force as well as the maintenance of the necessary hierarchy, required the preservation of the existing status quo, that is temporarily not to take the rank of Sergeant from the interested parties until the full regulation of the whole subject.

(6) In view of all the above it is honestly my position and I firmly believe that I have complied in the best possible manner to the annulling decision of the Supreme Court of the 20th March, 1985, which I studied with all care and respect and I bona fide made every possible effort to comply with, always in the light of the factual conditions which were created on account of it."

Another relevant fact is that counsel for the respondent conceded that the respondent had received by double registered letter dated the 8th May, 1985, copy of the judgment (as per exhibit X. 1, the Post-Office receipt) and that he himself had also informed the Chief of Police about the judgment who had knowledge of it from the date it was delivered but he maintained that this was irrelevant because there was no compliance with the provisions of Order 42A of the Civil Procedure Rules in that the Chief of Police had not been served with a duly endorsed copy of the Court judgment with which he was required to comply.

The main issues that have to be decided in this case are whether contempt proceedings lie in respect of non-compliance to the annulling declaratory judgments delivered by this Court in its Revisional Jurisdiction under Article 146 of the Constitution and if so whether this is a proper case for contempt.

It is a basic principle that one of the utmost importance that there should be due compliance with the judgments or orders of all Courts, otherwise the administration of justice cannot be effective. Indeed it is a contempt to disobey a judgment or order either to do a specific act within a specified time or to abstain from doing a specific act. Such failure to comply is one form of contempt of Court usually referred to as a civil contempt and is concerned with the enforcement of judgments or orders of the Court.

In Cyprus provision exists both in the Constitution and in various enactments giving the Courts jurisdiction to punish for contempt. Articles 150 and 162 of the Constitution provide that the Supreme Constitutional Court and the High Court respectively have jurisdiction to punish for contempt of themselves.

Article 150 of the Constitution reads:

«Το Ανώτατον Συνταγματικόν Δικαστήριο κέκτηται δικαιοδοσίαν να επιβάλλη ποινάς ένεκεν περιφρονήσεως του Δικαστηρίου τούτου.»

The English text is:

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

On the other hand Article 162 of the Constitution reads:

«Το Ανώτατον Δικαστήριον κέκτηται δικαιοδοσίαν να επιβάλλη ποινάς ένεκεν περιφρονήσεως του Δικαστηρίου τούτου και παν έτερον δικαστήριον της Δημοκρατίας, περιλαμβανομένων και των κατά το άρθρον 160 ιδρυομένων υπό κοινοτικού νόμου τοιούτων, έχει εξουσίαν να διατάσση την φυλάκισιν οιουδήποτε προσώπου μη υπακούοντος εις απόφασιν ή διαταγήν αυτού μέχρι της συμμορφώσεως αυτού προς την απόφασιν ή διαταγήν ταύτην, εν πάση όμως περιπτώσει η φυλάκισις δεν δύναται να υπερβή τους δώδεκα μήνας.

Παρά τας διατάξεις του άρθρου 90 νόμος ή κοινοτικός νόμος, αναλόγως της περιπτώσεως, δύναται να χορηγήση δικαιοδοσίαν επιβολής ποινής δια περιφρόνησιν του δικαστηρίου.

In English it reads:

"The High Court shall have jurisdiction to punish for any contempt of itself, and any other court of the Republic, including a court established by a communal law under Article 160, shall have power to commit any person disobeying a judgment or order of such court to prison until such person complies with such judgment or order and in any event for a period not exceeding twelve months.

A law or a communal law, notwithstanding anything in Article 90 contained, as the case may be, may provide for punishment for contempt of Court."

There is obviously a difference in those two provisions inasmuch as in Article 150 there is no provision to commit to prison any person disobeying a judgment or order as there is in Article 162, for its subordinate Courts.

By the merger of the two Courts under the Administration of Justice (Miscellaneous Provisions) Law 1964 (Law No. 33 of 1964), these two articles must be taken to refer to the present Supreme Court that delivered the judgment in question, and be applicable as the case may be to the matters falling within the respective jurisdiction of the Supreme Court. Before going on any further, I ought to point out that the present application was based inter alia on Article 162 and not on Article 150 which referred to the revisional jurisdiction of the Court. But I leave the matter at that.

Section 42 of the Courts of Justice Law, 1960, provides:

> "Subject to any Rules of Court every Court shall have power to enforce obedience to any order issued by it, directing any act to be done or prohibiting the doing of any act, by fine or imprisonment or sequestration of goods. And the Court may in addition adjudge to the person in whose favour the order was made such amount by way of conpensation as the Court may deem fit."

Its section 44 as amended by Law No. 50 of 1962, provides for contempt of Court and makes offences the instances enumerated therein, punishable with imprisonment for six months or to a fine not exceeding £100 or to both such imprisonment and fine.

Finally section 9 of the Police Law, Cap. 285, as amended by Law No. 53 of 1968 section 2, provides for the administration of the Force and that same is vested in the Chief of Police.

Compliance is also required in respect of judgments given in relation to recourses under Article 146 of the Constitution, paragraphs 4 and 5 of which provide as follows:

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

(a) confirm, either in whole or in part, such decision; 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 by the organ or authority or person concerned."

The remedies which are available under such Article are, as can be seen, exhaustively set out in paragraph 4 thereof. Paragraph 5 on the other hand, provides that such declaratory judgments are to be binding and must therefore be given effect to, but the provisions of such paragraph do not grant an extra remedy to an applicant over and above those available under paragraph 4, nor do they on their own empower him to enforce such judgment or to proceed for contempt against the non-complying respondent. Such jurisdiction to entertain contempt proceedings in a proper case of course is given to the Court by Article 150 of the Constitution on the motion of any person interested in the judgment. Relevant is also what was stated by the Full Bench in the case of *The Republic of Cyprus* v. *Ivi Nissiotou* (1985) 3 C.L.R. 1335 at p. 1350:

"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."

And also at p. 1351:-

"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 requirement of compliance by the administration with the decisions of the Courts and in particular the Revisional Court, exists also in Greece where compliance is required by the administration with the decisions of the Greek Council of State. The matter there is regulated by law where in accordance with section 50(4) of Law 3713/1928 (now see Law 170/1973),

"The administrative authorities shall in the exercise of their obligation under section 107 paragraph 4 of the Constitution, comply at each given time, by a positive action with the contents of the decision of the Council or abstain from any act which is contrary to its decision. The defaulter apart from prosecution under section 259 of the Criminal Code, shall also have personal liability for damages."

(See also Vavaretou, Criminal Code, 1980, pp. 840-841.)

In accordance with the aforesaid section 259, the person in breach may on criminal conviction be liable to up to two years imprisonment. Provision to the same effect also exists in the Constitution of Greece 1968, Article 107.4 which provides that:

"The compliance of the administration with the annulling decisions of the Council of State constitutes its obligation."

The same provision also appears in Article 95.5 of the present Constitution of Greece, 1975:

"5. The administration shall be bound to comply with the annulling judgments of the Council of State.

A breach of this obligation shall render liable any responsible agent as specified by law."

Ample authority on the matter can also be found in Tsatsos' Recourse for Annulment (1971) p. 401 et seq.; also Dendias, Administrative Law (1965), Vol. 3, at pp. 357 - 358.

Vegleris in his book "The Compliance of the Administration with the Decisions of the Council of State", extensively deals with this matter. It is stated therein that the requirement of compliance by the administration emanates from the declaratory nature of the decisions of the Council of State which brings about the annulment of the act as well as its legal consequences and results, and renders the act null and void. It also emanates from the binding effect of judicial pronouncements on the administration which is bound to put into effect the legal consequences of an annulling decision (see p. 67). However, as stated in p. 69, the sanctions provided for in paragraph 4 of section 50 of Law 3713/1928 serve as a deterent but cannot give effect to the annulling decision. The situation cannot be put in the correct perspective by the annulling court or any other compulsory means. It remains a purely administrative matter which can only be rectified by positive actions by the administration in compliance with the decision of the Court.

In other words the position in Greece is that the matter of contempt of declaratory decisions of the Council of State is specifically provided for by law and it is of a punitive character, it is therefore of no help as it cannot be applied to cases in Cyprus.

The next question which I must examine is whether the present case is a proper case of contempt. In order to hold that a person has committed contempt certain prerequisites have to be satisfied first. That is it must be established that the terms of the order or judgment are clear and unambiguous; secondly it must be shown that the respondent has had proper notice of such terms; and thirdly, there must be clear proof that the terms have been broken by the res-

pondent. (See Borrie and Lowe, The Law of Contempt (1973) at pp. 315-316.)

The first requirement presents no problem. As regards the second requirement it must be shown that the alleged defaulter has had proper notice of what he is required to comply with because it is an established principle in the words of Lyell J., in *Husson* v. *Husson* [1962] 3 All E.R. 1056 that "a person cannot be held guilty of a contempt in infringing an order of the Court of which he knows nothing".

As already stated above it is the contention of counsel of the respondent that the Chief of Police has not received proper notice of the decision because the requirements of Order 42 A have not been complied with.

Order 42A inter alia provides:

> "1. Where any order is issued by any Court directing any act to be done or prohibiting the doing of any act there shall be endorsed by the Registrar on the copy of it, to be served on the person required to obey it, a memorandum in the words or to the effect following:
>
> 'If you, the within-named A. B., neglect to obey this order, by the time therein limited, you will be liable to be arrested and to have your property sequestered.'
>
> 2. An office copy of the order shall be served on the person to whom the order is directed. The service shall, unless otherwise directed by the Court or a Judge, be personal."

The language of the order is clearly mandatory, "there shall be endorsed", "shall be served", compliance is therefore imperative.

According also to the language of the order, it applies where there is an order of judgment issued by any Court directing "any act to be done or prohibiting the doing of any act"; in other words it applies to orders or judgments the effect of which is mandatory or prohibitive.

As indicated in the marginal note the above rules 1 and 2 were intended to correspond to the Old English Order 41, rule 5, which so far as relevant reads as follows:

"Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment, or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, etc...."

As explained in the notes following, (see Annual Practice 1956 p. 711) the rule only applies to a judgment or order to do an act, it does not apply to merely prohibitive orders.

On the other hand, Order 45 rule 7 of the New English Rules of the Supreme Court (see 1973) Annual Practice, Vol. 1, pp. 687-689) which replaced the aforesaid 0.41 r. 5, has been extended to apply also to prohibitive orders.

Order 45, rule 7(2) provides inter alia that:

".... an order shall not be enforced under rule 5 unless -

(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question...."

Order 45 rule 7(b) provides as follows:

"An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either -

(a) by being present when the order was made, or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise...."

As pointed out in the note thereto at p. 688:

"-Unlike the former 0.41, r. 5, which it replaces. this Rule applies to a judgment or order to do an act as well as to abstain from doing an act, but otherwise it embodies the former practice."

And further down at the same page:-

"The new para. (6) has been added presumably to resolve any doubt that under this Rule, as under the former practice, the Court has the power to proceed to the enforcement of a negative order by writ of sequestration or by order of committal even though the original order has not yet been served in accordance with the requirements of this Rule, provided however that the Court is satisfied that the person or party in question has had notice of it either by being present when the order was made or by being notified of its terms by telephone, telegram or in such other manner as the Court may deem sufficient. A negative order is often made ex parte in circumstances of great urgency to preserve the status quo, and it would be highly inconvenient if it could not be enforced until it was first served as required by this Rule. The new para. (6), therefore, is designed to enable the Court, if necessary before service, to prevent disobedience or further disobedience or to compel obedience to a negative order".

Useful reference as to the interpretation of the aforesaid orders and in relation to our Order 42A can be found in the case of *Mouzouris and Another v. Xylophagou Plantations Ltd.*, (1977) 1 C.L.R. 287 where at p. 298 it is stated by the Court in allowing the appeal by one of the two appellants against a finding by the trial Court of disobedience to an order by it which order had not been served personally on the said appellant as required by Order 42A, but was so served on her husband instead:-

"By contrast in the old Order 41, rule 5, there was no reference to orders prohibiting the doing of an act. Hence it was held that the order did not apply to prohibitory orders. In the new English Rules,

where prohibitory orders are also included in Order 45, rule 5, it was thought necessary to make express provisions under para. 6 of Order 45, rule 7, about enforcement of such an order before service of the copy thereof has been effected and pending such service. In the absence of such a provision in Order 42A of our Rules and the existence only of rule 2 hereinabove set out whereby the order shall be served on the person to whom the order is directed and the service unless otherwise directed by the Court, shall be personal, the English Rules are of no assistance. Therefore the appeal is allowed as far as appellant 2 is concerned."

Reference must also be made to the case of *Ioannides* v. *Republic* (1971) 3 C.L.R. 8 where the respondents were held liable for contempt for having disobeyed an order of the Court prohibiting them from deporting the applicant from Cyprus and issued provisionally pending the determination of his recourse against his said deportation. However, the principles laid down in the *Ioannides case* must be read in the light of the fact that we were concerned with an interlocutory application for a provisional order of a prohibitive nature which renders it distinguishable from the case at hand. Also there the question of the application of Order 42A to revisional cases was not entered into as it did not apply.

In the present case assuming that the said Order 42A applies to declaratory judgments, the requirements set out in Order 42A as regards proper service of the judgment, have not been complied with. There has not been personal service as such is defined by Order 5 of our Civil Procedure Rules, as service by letter, double registered or otherwise is considered in rule 9 thereof as substituted service and not personal. Secondly, the respondent was not served with a properly indorsed copy of the judgment with the appropriate notice as is provided by Order 42A rule 1.

The question that remains to be considered now is whether Order 42A has any application in the case of declaratory judgments issued by the Supreme Court.

Rule 18 of the Supreme Constitutional Court Rules, 1962, provides as follows:-

> "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 effect of such rule is that the Civil Procedure Rules are deemed to apply mutatis mutandis to proceedings in the Supreme Court in its Revisional Jurisdiction. Hence since there is a clear requirement of proper service which was not complied with, the jurisdiction of the Court under Order 42A cannot be invoked and thus there can be no committal for contempt.

The matter could end there and the application dismissed on the aforesaid ground, but as the question posed is a fundamental one, I would like to proceed and examine whether contempt proceedings can lie for noncompliance to an annulling declaratory judgment and where no other relief was either prayed for or granted.

On the position as regards civil cases reference can be made to *Daskalopoulos* v. *Ottoman Bank (No. 4)*, 14 C.L.R. 227, where a distinction was made between a declaratory judgment in respect of which no execution lies when no other consequential relief is prayed, and a judgment containing an order in respect of which execution may be issued.

As regards the question of civil contempt Pikis J., in *Nissiotou* v. *The Republic* (1983) 3 C.L.R. 1498 at p. 1502 et seq., observed that jurisdiction to punish for contempt is a peculiar feature of the English legal system not encountered in the same form in other legal systems and he felt that he could validly presume that the constitutional drafters in enacting Article 150 of the Constitution intended to bestow upon the Supreme Constitutional Court a power comparable to that exercised by Courts of Record in England.

That being so, this jurisdiction, in my view, if and when is to be invoked in proceedings under Article 146 of the Constitution, has to be applied on its terms and as stated by Lord Denning, M.R., in *McIlraith* v. *Grady* [1963] 1 Q.B. 648 at p. 477 "no man's liberty is to be taken away unless every requirement of the law has been strictly complied with".

As already seen in the *Nissiotou case* (supra) (1985) 3 C.L.R. 1335 the remedies that this Court may grant upon a recourse under Article 146 of the Constitution are set out in paragraph 4 thereof and under paragraphs (b) and (c) thereof, the decision of the Court takes the form of a declaration and the binding effect of such a declaration is provided for by paragraph 5 of the said Article, that it is binding on all courts and on all organs or authorities in the Republic which have to give effect to and act upon it. The obligation therefore to comply stems from the Constitution and not from the judgment itself which does not have the nature of an injunction which has been described as a most solemn and authoritative form of order made by a Court expressly enjoining a party either to do a particular act, in which case the injunction is known as a mandatory injunction, or to refrain from doing a particular act, in which case the injunction is known as a prohibitive injunction (See Borrie and Lowe p. 315), the general rule being that it is the duty of those so enjoined to strictly observe the terms of the injunction. As Kindersley, V-C., said in *Harding* v. *Tingey* [1864] 12 W.R. 684, it is of the

> "greatest importance that either an order for an injunction or an interim order should be implicitly observed, and every diligence exercised to observe it".

Nor is this a case of a breach of an undertaking entered into with or given to the Court by a party or his counsel, nor a disobedience of an order for the payment of money to another person or to pay money into Court, in both cases disobedience to the order amounting to contempt, or disobeying judgment or order for the giving of possession of land or for the giving of goods within the time specified, nor failure of a party to comply with an order for interrogatories or for discovery or production of documents or dis-

obeying a prerogative writ or order or other orders of the Court, and I refer to these instances as they are the ones in respect of which civil contempt may be invoked. Therefore whatever the legal position may be for not complying with paragraph 5 of Article 146 of the Constitution, it cannot amount to contempt of Court, as the failure to comply is against a provision of the Constitution and not with a judgment and direction of a Court.

Declaratory judgments may be unenforceable as of their nature and as such have an inherent defect in the domain of Private Law, but this cannot be so serious in the domain of Public Law since administrative organs have to act responsibly and give effect to declaratory judgments as they are duty bound under the Constitution to do.

Unlike Greece where as already seen specific provision is made in the Criminal Code and Law 3713/1928, our Criminal Code section 137 makes it an offence for everyone who disobeys any order, warrant or command duly made, issued or given by any Court. This provision shows that the offence is for disobedience of lawful orders and not for declaratory judgments, and this is the only corresponding provision to the provision in Greece earlier referred to in this judgment. This provision came under examination in the case of *Renos Christodoulides* v. *The Police* (delivered on the 14th November, 1985, Criminal Appeal No. 4660.)*

The powers of the Court under Article 150 of the Constitution and, to the extent applicable, Article 162 must be read as referring to such decisions or judgments or orders that as of their nature do, under English Common Law, entail commitment for contempt. If I may say with respect, the disobedience of the provisional order issued an *Ioannides case* (supra) is an example of such an instance of Article 150 being applicable.

Before concluding I would like to deal briefly with an aspect of the case that stems from the facts alleged in the affidavit showing the bona fide conduct of the Chief

* (1985) 2 C.L.R. 260.

of the Police. Mens rea from the point of view of establishing a case of contempt, there is no need to be proved on the part of the defendant, (see Borrie and Lowe p. 321) but motive, however, while not relevant in establishing a case of contempt, is important from the point of view of mitigating the contempt.

The recent case of *Webster* v. *Southwark London Borough Council* [1983] 2 W.L.R. p. 217 bears out my approach on the subject. In this case where the plaintiff had obtained a declaratory judgment of the Court as to his rights to be granted facility to hold a public meeting, it was held:

"(1) that, since the order of the Court was a declaratory and not a coercive order, the refusal of the local authority to comply with its terms did not amount to a contempt of Court; and that, since the local authority was not in contempt, the actions of the two councillors, in ensuring that the local authority did not act responsibly and comply with the order of the Court, did not amount to contempt of Court.

(2) That, although R.S.C., Ord. 45, r. 5 only referred to the Court's power to grant leave to issue a writ of sequestration where a person refused or neglected to comply with a coercive order of the Court or disobeyed such order, the Court had an inherent power to ensure that its orders were carried out where the interests of justice demanded that the order be complied with; that since the local authority had knowingly adopted and continued a policy of denying the plaintiff his rights under the Representation of the People Act 1949 and its elected members would have ensured that no hall was available to the plaintiff, leave to issue the writ of sequestration had been properly sought and properly given but, since the writ had served its purpose, it would be discharged."

For all the above reasons the application is dismissed but in the circumstances there will be no order as to costs.

Application dismissed.
No order as to costs.