

1986 April 23

[SAVVIDU S. J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

NITSA EVANGELOU AND OTHERS.

*Applicants,*

v.

THE CYPRUS BROADCASTING CORPORATION  
THROUGH ITS BOARD OF DIRECTORS

*Respondents.*

(Case No. 170/83).

5 *Contempt of Court—Non-compliance with an annulling declaratory judgment of this Court issued in the exercise of its revisional jurisdiction—No proceedings for contempt can be taken—The Supreme Constitutional Court Rules, 1962, rule 18 and The Civil Procedure Rules Order 42A—Compliance with provisions of said Order mandatory—The old English Rules, Order 41, rule 5.*

10 *Contempt of Court—Jurisdiction to punish for—Constitution, Articles 150 and 162, The Courts of Justice Law 14/60 section 42 and section 44 (as amended by Law 50/62).*

15 The applicants move the Court for an order that the Director-General and the members of the Board of Directors of the Cyprus Broadcasting Corporation do stand committed to the Central Prisons for their contempt of this Court in failing to give effect to and act upon an annulling decision of this Court delivered on the 3.5.85;\* in the alternative that the applicants be at liberty to issue a writ of attachment against the said Director-General and members of the said Board for 20 their said contempt. The application is based on Articles

\* Evangelou and others v. C.B.C (1985) 3 C.L.R. 1410.

146 and 150 of the Constitution, on the Courts of Justice Law 14/60 and on rule 18 of the Rules of the Supreme Constitutional Court of 1962 and the Civil Procedure Rules.

The application was opposed by the said Director-General and the members of the said Board who contended that there has been no disobedience to any order of the Court and that they had acted on the basis of a decision of the C.B.C. dated 28.11.85, in compliance with the judgment of the Court.

*Held*, dismissing the application: (1) In order to hold a person guilty of contempt it must be established that the terms of the order or judgment are clear and unambiguous and that the respondents have had proper notice of such terms. 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 before the Court in its revisional jurisdiction. The relevant to the present case Order of the Civil Procedure Rules is Order 42A. As one may notice from the wording of this order, especially the expressions "there shall be indorsed" "Shall be served" "shall state the time" compliance with its provisions is mandatory. As in this case at no time prior to the institution of these proceedings any order of the Court indorsed by the Registrar in the terms provided by Order 42A has been served upon the respondents, the present proceedings have to be dismissed on this ground alone.

(2) No proceedings for contempt lie in this case where the judgment of the Court is merely an annulling declaratory judgment in the exercise of its revisional jurisdiction (*Kyriacou and others v. The Minister of Interior* (1986) 3 C.L.R. 300 adopted. *Ioannides v. The Republic* (1971) 3 C.L.R. 8 distinguished).

*Application dismissed.*  
£100.— costs in favour of respondents.

Cases referred to:

*Kyriacou and other v. The Minister of Interior* (1986)  
3 C.L.R. 300;

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

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

**Application.**

Application for an order of the Court that the respondents be committed to the Central Prisons for contempt of Court in failing to give effect to and act upon the  
10 decision of the Court delivered on the 3rd May, 1985.

*K. Talarides*, for the applicants.

*P. Polyviou*, for the respondents.

*Cur. adv. vult.*

15 SAVVIDES J. read the following decision. By the present application the applicants move the Court for an order-

(1) that the Director-General and the members of the Board of Directors of the respondent Corporation do stand committed to the Central Prisons of their contempt of this Court in failing to give effect to and act upon the  
20 decision of this Court delivered on the 3rd May, 1985.

(2) In the alternative, that the above-named applicants may be at liberty to issue a writ or writs of attachment against the said Director-General and members of the Board of Directors for their said contempt.

25 (3) Costs of and incidental to the application.

(4) Further or other order that may be made as to the Court shall seem proper.

The application is based on Articles 146 and 150 of the Constitution, on the Courts of Justice Law 14/60, on  
30 Rule 18 of the Rules of the Supreme Constitutional Court of 1962 and the Civil Procedure Rules.

The facts relied upon in support of the application are

set out in an affidavit sworn on the 30th November 1985 by Elli Gerolemou, one of the applicants in this case. It is stated in the said affidavit that in spite of the annulling decision of the court which was delivered on 3.5.1985, the respondents have not implemented it, notwithstanding the fact that they have been repeatedly requested to do so, both in writing and orally. It is also alleged that although the applicants impressed repeatedly on the respondents, that sufficient time had passed by since the decision of the court for the respondent Corporation to implement the decision and that the applicants had given all time necessary to the respondents to do so, and the respondents had undertaken to decide on counter-proposals of the applicants, the respondents acting on behalf of the respondent Corporation are protracting the matter for the purpose of avoiding to apply a decision of the court until the appeal filed by the respondent Corporation is heard, which clearly indicates that the respondents have no intention of complying with the decision of the court, thereby flagrantly disobeying same.

The application was opposed by the Director-General and the members of the Board of Directors of the respondent Corporation, against whom the contempt proceedings are directed. By his affidavit in support of the opposition, the Director-General of the respondent Corporation refuted the allegations of applicants and contended that there has been no disobedience to any order of the court and that the respondents acted on the basis of a decision taken by the respondent Corporation on 28.11.85, in compliance with the judgment of the court. The contents of such decision, as appearing in the minutes of the meeting of 28.11.85, copy of which was annexed to the affidavit sworn on behalf of the respondents, read as follows:

“The Board considered the matter which arose as a result of the judgment of the Supreme Court dated 3.5.85—Cases 170 and 258/83.

On the basis of the judgment of the Supreme Court there have been annulled-

(a) the emplacement of the applicants to the post of Programme Officer A (personal title) Scale A 8/9.

5 (b) The publication of the post of Programme Officer A Scale A 10 which was effected on 9.4.83.

10 During the examination of the above matter, the legal adviser of the Corporation explained the legal effect of the judgment of the Supreme Court and informed the Board that an appeal has been filed which has not yet been tried. In the legal adviser's opinion the trial of the appeal is independent from the obligation of the Corporation to comply with the judgment of the Supreme Court.

15 The Board bearing in mind the above and after an exchange of views, decided that-

20 (a) till the trial of the appeal the applicants will remain in the post of Music Programme Officer under the existing schemes of service of the post and on Scale A 8/9 (£2272x111—3493/ £2821x136—3909) instead of the old Scale 6/7 (£2057x95—2437x98 — 2927/£2342x111 — 2897x124 — 3393).

(b) re-examine the matter after the determination of the appeal.

25 On the basis of the same judgment of the Supreme Court, the emplacement of Georghios Damianou (Case No. 258/83) to the post of Programme Officer A (personal title) Scale A 8/9, was also annulled."

30 By the judgment of this court in the above cases (*Nitsa Evangelou and 12 others, v. The Cyprus Broadcasting Corporation through the Board of Directors* (1985) 3 C. L.R. 1410), the decision of the respondent Corporation dated the 20th January, 1983 whereby the applicants were emplaced to the post of Programme Officer A (personal title) on Scale A 8/9, and also the decision of the re-  
35 spondent to advertise the post of Programme Officer A and invite applications for its filling, were annulled.

An appeal has been filed against the above judgment

which is pending before the Full Bench, and the respondent Corporation applied, unsuccessfully, for stay of the proceedings pending the determination of the appeal.

The applicants filed the present application on the 30th November, 1985. The application came up before this Court on the 21st January 1986, when counsel for the respondent Corporation expressed the view that bearing in mind the fact that the proceedings were contempt proceedings, service of the application was improperly effected on him, in his capacity as counsel handling the case for the respondent in the recourse, and submitted that the persons charged with such contempt should have been served personally with the notice of the application. As a result, the case was adjourned and directions were made for service of the application on all parties concerned. The application was so served on the parties charged with contempt and the opposition was filed both on behalf of the respondent Corporation and on their behalf.

The main issues which have to be decided in this case are whether contempt proceedings lie in respect of non compliance with annulling declaratory judgments of this court in its revisional jurisdiction under Article 146 of the Constitution and if so, whether this is a proper case for contempt. Also, whether the respondents in this application have complied with the annulling effects of the judgment of this court.

In arguing the case for the applicants, counsel on their behalf contended that the respondents failed to comply with the judgment of the court and emplace the applicants in the existing post of Programme Officer A, Scale A 10 which was the post that replaced their previous post but emplaced them on a non-existing post of Programme Officer A, Scale A 8/9 pretending that by so doing they had complied with the judgment of the Court.

After making extensive reference to French and Greek authorities on the matter of compliance with court judgments and the consequence of non-compliance, counsel for applicants submitted that contempt proceedings in the

present case lie against all the respondents who were the persons responsible to give effect to the judgment of the Court. He further submitted that the decision of the respondents which was taken on 28.11.85 does not satisfy the judgment of the Court and it does not amount to compliance with such judgment and that against such decision a new recourse has been filed in the Supreme Court under No. 79/86 which is pending for trial.

Counsel for respondents advanced three grounds on the basis of which the application should be dismissed.

The first ground was that the judgment served on the respondents was not indorsed with the memorandum required by Order 42(A) of the Civil Procedure Rules in case of contempt proceedings.

Second, no contempt proceedings can lie in the case of judgments of the Supreme Court in its revisional jurisdiction under Article 146 of the Constitution where the judgment of the court is only declaratory and of an annulling nature and is neither mandatory nor prohibitive.

Third, in the present case there has been compliance by the respondent Corporation with the judgment of the court by a new decision taken on 28.11.85 whereby effect was given to the said judgment of the court and that if applicants contest the validity of such decision, their remedy is to challenge same before the court, as they have done by filing recourse No. 79/86.

I shall deal first with the question whether the applicants have given proper notice of the terms of the order to the persons charged with contempt in this case and whether the procedure contemplated for attachment for contempt has been followed.

In order to hold that a person has committed contempt, certain prerequisites have to be satisfied first. It must be established that the terms of the order or judgment are clear and unambiguous and that the respondents have had proper notice of such terms. As it was held in *Husson v. Husson* [1962] 3 All E.R. 1056-

“A person cannot be held guilty of contempt in infringing an order of the court of which he knows nothing.”

Rule 18 of the Supreme Constitutional Court Rules 1962, provides as follows: 5

“The Civil Procedure Rules in force in the Republic on the date of the issue of these Rules shall apply mutatis mutandis to all proceedings before the Court, so far as circumstances permit unless other provision is made by these Rules or unless the Court or any Judge otherwise directs.” 10

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. The relevant order of the Civil Procedure Rules dealing with this matter, is Order 42A which, inter alia, provides: 15

“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: 20

‘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.’ 25

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.” 30

In the marginal note to such order reference is made to the corresponding old English Rules, Order 41, rule 5, which, to the extent relevant to the present case, reads as follows (Annual Practice, 1960, p. 954):

“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 35



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, viz.:-

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"If you, the within-named A.B., neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (or order)." "

As one may notice from the wording both of Order 42A of our Civil Procedure Rules and Order 41, rule 5 of the English Rules, especially the expressions "there shall be indorsed," "shall be served," "shall state the time," compliance with the provisions of such order is mandatory.

In the notes to the English Order 41, rule 5, we read the following: (see, Annual Practice, 1960, at p. 956):

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"An attachment of a person for disobedience to an order requiring him to do a given act within a given time will not be directed unless a copy of the order, with a proper indorsement, has been personally served upon him in due time, or unless he has had notice of the order and is evading service thereof."

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It is an undisputed fact in the present case that what was served on the respondents, and after the filing of the present application, was a copy of this application to which copy of the judgment of the court was attached and at no time, prior to the institution of these proceedings, any order of the court indorsed by the Registrar in the terms provided under Order 42A, rule 1, has been served upon the respondents, disobedience to which would have rendered them liable for attachment for disobeying such order. Failure to comply with the provisions of order 42A renders any proceedings for attachment nugatory. Therefore, on this ground alone, the present proceedings have to be dismissed.

Notwithstanding my above conclusion which disposes of the present application, I shall proceed and consider

whether contempt proceedings lie in respect of non-compliance with annulling declaratory judgments delivered by this Court in its revisional jurisdiction under Article 146 of the Constitution.

Both in our Constitution and in various other enactments provision exists, giving the courts jurisdiction to punish for contempt. 5

Under Articles 150 and 162 of the Constitution, provision is made that the Supreme Constitutional Court and the Supreme Court respectively, have jurisdiction to punish for contempt of themselves. Also, under section 42 of the Courts of Justice Law, 1960, provision is made as follows: 10

“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 compensation as the Court may deem fit.” 15  
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Also, section 44, as amended by Law 50/62, provides for contempt of court and makes offences in the instances enumerated therein, punishable with imprisonment of six months or to a fine not exceeding £100 or to both such imprisonment and fine. 25

Useful assistance as to whether proceedings for attachment for contempt of court in revisional jurisdiction judgments lie, may be derived from the judgment of A. Loizou, J. in Case No. 198/78, *Kyriacou and others v. The Minister of Interior*, delivered on the 21st February, 1986,\* in which an order of the Court was prayed ordering the imprisonment of the Chief of Police for contempt of Court, in that he failed to comply with an annulling judgment of the Court. I find it necessary to refer to the following extract from the judgment in the said case (pp. 310-313 and 318-320):- 30  
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\* Reported in (1986) 3 C.L.R. 300.

“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:

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

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

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

15           (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.

20           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.’

25           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.'

5 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.'

10 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.

15 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 deterrent 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.

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

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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.

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As already seen in the *Nissiotou case* (supra) 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 under paragraph (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 .....

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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

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order for the giving of possession of land or for 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 disobeying 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."

I adopt fully the views expressed by my learned brother in the above case and I wish further to endorse his observations to the effect that 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 to do.

My attention has been drawn to the case of *Ioannides v. The Republic* (1971) 3 C.L.R. 8, in which proceedings for contempt were taken. That was a case of disobedience of a provisional order issued and not of an annulling declaratory judgment and it serves as an example of an instance where Article 150 is applicable.

In the result, I conclude that no proceedings for contempt can be taken in this case where the judgment of the court is merely an annulling declaratory judgment in the exercise of its revisional jurisdiction.

Before concluding, I shall deal briefly with the last question raised as to whether there has been compliance by the respondents with the previous judgment of this Court.

It is common ground that a decision was taken by the respondents after the judgment of the court. It is the contention of the respondents that by such decision they have

complied with the annulling effects of the judgment of the court, whereas counsel for applicants contends that such decision does not amount to a compliance with the judgment. A new recourse under No. 79/86 has been filed by the applicants, challenging such decision. Once the matter is pending before the court for determination, and in view of my findings that the present proceedings cannot succeed for the reasons stated hereinabove, I find it unnecessary to enter into this matter, and I leave the question open for determination by the court before which the case is pending. 5 10

For all the above reasons this application is dismissed with £100.- costs in favour of the respondents.

*Application dismissed.*  
*Applicant to pay £100.- costs.* 15