

1987 October 13

[SAWIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PAPAIOANNIS ZAVROS,

Applicant,

v

- 1 THE DISTRICT OFFICER OF PAPHOS AS CHAIRMAN OF
THE IMPROVEMENT BOARD OF KOUKLIA,
- 2 THE IMPROVEMENT BOARD OF KOUKLIA,

Respondents

(Case No 552/86)

5 *Retrospectivity of an administrative act — The principle that an administrative act should not be given retrospective effect — Exceptions, enumeration of — Annulment of an act not for formal, but on grounds of substantial invalidity — Whether the new act issued upon reconsideration of the matter, can be given retrospective effect as from the date of the annulled decision — Question answered in the negative*

10 *Natural Justice — Right to be heard — Dismissal of an officer of an improvement Board annulled on ground that it amounted to a disciplinary sanction and the officer had not been given opportunity of being heard — Such annulment is not based on formal, but on grounds of substantial invalidity*

15 *Legitimate interest — Whether an officer of an Improvement Board, who by reason of an annulled decision to dismiss him had not rendered any services to the Board as from such dismissal, has a legitimate interest to challenge the retrospectivity of a new decision, issued following the annulment, with effect as from the date of the annulled decision — Question answered in the affirmative*

20 By letter dated 24 11 84 the Improvement Board of Kouklia informed the applicant of its decision to terminate his service with the Board. This decision was annulled by this Court (See *Zavros v District Officer of Paphos* (1986) 3 C L R 44) on the ground that applicant's dismissal amounted to a disciplinary sanction and the applicant had not been afforded an opportunity of being heard before his dismissal.

Following the said annulment the chairman of the respondent Board informed the applicant in writing of the charges against him and invited him

to attend a meeting of the Board in order to answer them

As a result the applicant attended a meeting of the Board. He made a general statement relating to the charges against him, but refused to answer any questions put to him

On the material before it, the Board decided to dismiss the applicant, furthermore it decided to give retrospective effect to the dismissal as from 22 11 84, that is the date of the first dismissal, which had been annulled by this Court 5

Hence this recourse

Counsel for the respondents raised an objection that the applicant lacks legitimate interest, because he is only challenging the retrospectivity of the sub judice act and has not rendered any services during the relevant period. In support of his submission counsel relied on *Savvides v Public Service Commission* (1985) 3 C L R 1749 at 1755 10

Held, annulling in part the sub judice decision (1) It is not necessary to deal with the issue of legitimate interest, because the applicant is not only challenging the retrospectivity of his dismissal, but, also, his dismissal as such. In any event the facts of *Savvides' case*, supra should be distinguished from the facts of this case. Indeed, in *Savvides' case* the applicant voluntarily decided not to offer his services (and he challenged only the retrospectivity of his dismissal), whereas in this case the applicant was prevented by the Board by the latter's annulled decision from offering his services 15 20

(2) The first dismissal of the applicant has not been annulled for formal reasons but for substantial invalidity (*Morsis v Republic* (1965) 3 C L R 1 at pp 11 and 12 adopted). This case does not fall within one of the recognised exceptions to the principle that an administrative act cannot be given retrospective effect. It follows that the sub judice act has to be annulled to the extent to which it was given retrospective effect. 25

(3) On the material before the Court it was reasonably open to the respondent Board to dismiss the applicant 30

*Sub judice decision annulled
in part. No order as to costs*

Cases referred to

- Zavros v The District Officer of Paphos* (1986) 3 C L R 44,
- Savvides v The Public Service Commission* (1985) 3 C L R 1749, 35
- Morsis v The Republic* (1965) 3 C L R 1,

3 C.L.R. Zavros v. District Officer Paphos

HjiGeorghiou v. The Republic (1968) 3 C.L.R. 326;

The Republic v. Mozoras (1970) 3 C.L.R. 210

Recourse.

5 Recourse against the decision of the respondents to terminate applicant's services as an Inspector of the Improvement Board of Kouklia.

G. Triantafyllides, for the applicant.

K. Chrysostomides, for the respondents.

Cur. adv. vult.

10 SAWIDES J. read the following judgment. The applicant challenges the decision of the respondents contained in a letter dated 7.8.1986, whereby his services as an Inspector of the Improvement Board of Kouklia were terminated retrospectively, as from 24.11.1984.

15 The applicant was in the service of the Improvement Board of Kouklia (I.B.K.) village as an Inspector since 23rd November 1965, on a month to month basis in order to exercise, amongst others, the duties of accountant and secretary of the Board, which included, inter alia, the regulation of the water supply of the
20 village, the checking of the water consumption in each house as recorded on the water meters, the collection of any dues for water consumption and any fees and rates imposed by the Board. As from December, 1977, the applicant was also consecrated as a priest of the village, with the consent of the respondents.

25 As a result of certain accusations made against him concerning his behaviour towards a female inhabitant of the village the I.B.K. decided on 22.11.1984 to terminate the services of the applicant and such decision was communicated to him by letter of respondent 1 as Chairman of the Board dated 24.11.1984.

30 The applicant filed Recourse No. 15/85 challenging the above decision. By a judgment delivered by me on the 12th February, 1986 in the above case, I annulled the sub judice decision on the ground that there was violation of the rules of natural justice, in
35 that the applicant was not afforded the opportunity to be heard before his dismissal. (See *Papaloannis Zavros v. The District Officer of Paphos as Chairman of the Improvement Board of Kouklia and Another* (1986) 3 C.L.R. 44 at pp. 50, 51).

After the annulment of the decision of the Board to terminate the services of the applicant, the I.B.K. following the observations of the Court which led to the annulment of the decision, decided to call the applicant before it to answer the charges against him and offer his explanations. The charges are contained in a letter signed by the Chairman of the Board dated 8th May, 1986 addressed to the applicant and are that-

(a) The applicant in November, 1984 in the course of discharging his duties, handed a love letter to a married woman in the village;

(b) during the years 1981 to 1984 he embezzled money received from the tourist shop at «Petra tou Romiou» and/or failed to collect money due to the I.B.K. from the said shop. By the aforesaid actions the applicant rendered himself incapable of, and/or impossible for him to exercise the duties of an Inspector in the future.

The applicant was invited to appear before a meeting of the I.B.K. and answer the charges against him.

The applicant attended the meeting of the I.B.K. which was held on 17.6.1986 to face the two charges against him as contained in the above notification. The procedure followed at such meeting and the decision taken appear in the minutes of such meeting. The relevant parts read as follows:-

«

The Chairman then called Mr. Zavros before the Board to answer the charges. The Chairman read out the charges/accusations as follows:-

.....

Then he invited Mr. Zavros to answer the above charges. Mr. Zavros replied as follows: - In respect of the first charge/accusation: 'I do not admit, I state that the Police and Prosecution Authorities investigated the matter and there is no case. In any event the alleged letter has no relation at all with my professional duties as Inspector of the Board. I deny that I delivered any letter in the course of discharging my duties as an Inspector of the Improvement Board of Kouklia.»

Then the Chairman asked him to answer certain clarifying questions but his answer was «I have no more to say. I cannot answer». Nevertheless, the Chairman proceeded with certain questions whereupon the applicant stated that if more questions
5 were put to him he was going to depart which in fact he did.

The Board then proceeded on the material before it, to take the sub judge decision, the material part of which reads as follows:-

«..... the Board having reconsidered the circumstances which had formed the basis of its decision. of 22.11.1984 for
10 the dismissal of Papaloannis Zavros, that is the complaint of the lady to whom Papaloannis Zavros behaved improperly , the decision of the Bishop of Paphos to discharge him temporarily from his duties as a priest for the same reason and
15 later to transfer him to another community, the hand-written letter itself, the hostile feelings and the unrest which were created in the village against him, the finding that for the aforesaid reasons it is not possible for him to be accepted in the community as an Inspector visiting frequently the houses of the inhabitants at any time, decides to dismiss him and
20 hereby dismisses Papaloannis Zavros from the post of Inspector of the Improvement Board of Kouklia.»

The Board further proceeded to give retrospective effect to the dismissal of the applicant as from 22.11.1984, in view of the fact that the annulment by the Supreme Court of its previous decision
25 to dismiss him was due to procedural grounds.

As to the remaining charges against the applicant, the Board postponed its decision pending the final decision of the Criminal Court which was trying the case.

The above decision was communicated to the applicant by
30 letter dated 7.8.1986 in which the reasons contained in the decision of the Board for his dismissal are set out. As a result, the applicant filed the present recourse.

Counsel for the applicant contended that the respondents could not terminate the services of the applicant as the offence for which
35 he was charged is not an offence committed in the course of his employment or related to the discharge of his duties and, further, that such dismissal could not have been made with a retrospective effect.

Counsel for the respondents argued that the applicant is challenging only the retrospectivity of his dismissal and in this respect he has no legitimate interest to pursue this recourse in view of the fact that he was not rendering any services at all as from 24.11.1984, the date of his original dismissal. He further submitted that the sub judge decision falls within the exemptions to the rule against retrospectivity of administrative acts, bearing in mind that it was taken as a result of an annulling decision of the Court which was made on formal grounds, that is the failure of the respondents to afford the applicant the opportunity of being heard, a defect which has been cured by the sub judge decision. Counsel concluded by stating that in case it is decided that the applicant is also challenging his dismissal, that the decision to dismiss him was properly taken and justified in the circumstances of the case.

Counsel for the applicant clarified, by his reply, that the dismissal of the applicant is also challenged by the present recourse and that the applicant possesses a legitimate interest to challenge the retrospectivity of his dismissal. The case, counsel added, does not fall within the established exemptions to the rule against retrospectivity of administrative acts; the annulment by the court of the previous decision of the respondents was not made in respect of a matter of a mere formality but of a breach of the fundamental rules of natural justice. Counsel finally submitted that the sentence imposed was an excessive one having regard to the circumstances of the case and the long service of the applicant.

Before proceeding to examine the validity of the sub judge decision, I shall deal briefly with the question of legitimate interest raised by counsel for the respondents. Counsel for the respondents relied on the case of *Savvides v. The Public Service Commission* (1985) 3 C.L.R. 1749 at p. 1755, in support of his submission that because the applicant did not offer any services since 24.11.1984, the date of his original dismissal, he was not entitled to any payment and did not possess, as a result, any legitimate interest to pursue the recourse, once he is not challenging his dismissal as such.

I wish to point out at this stage that it has been finally clarified by counsel and it is also obvious both from the application itself and the arguments of counsel that the dismissal of the applicant is also challenged. In view of this, I find it unnecessary to deal with this

issue, but in any event I feel that I should stress that the *Savvides* case (supra) was decided on its own facts and should be differentiated from the present one, in that the applicant there voluntarily decided not to offer his services (and he challenged
5 only the retrospectivity of his dismissal) whilst in the present case it was the respondents who, by their decision, prevented the applicant from offering his services. This submission of counsel for the respondents is, therefore, dismissed.

10 A perusal of the minutes of the Board discloses that its decision is in fact twofold. Under paragraph (1) at page 3 of the minutes a decision was taken «to dismiss» the applicant. Under paragraph (2) at page 4 a further decision was taken that «his dismissal will have retrospective effect as from 22.11.1984».

15 I shall deal first with the question of retrospectivity of the sub judice decision.

It is a well established principle of Administrative Law than an administrative act or decision cannot as a general rule be given retrospective effect subject to certain exceptions. Such exceptions have been enumerated in the case of *Savvides v. P.S.C.* (supra) at
20 p. 1755 as follows:-

«It is a basic and well established principle of Administrative Law that administrative acts cannot, as a rule, be given retrospective effect. To this general rule there are, however, certain exceptions. Such exceptions, as stated in the
25 Conclusions from the Case Law of the Greek Council of State (1929-1959) pp. 197-198, Kyriakopoulos on Greek Administrative Law. 4th ed., vol. B, pp. 400-401 and Stassinopoulos on the Law of Administrative Acts (1951) pp. 370-373 include the following:

30 (a) When there is specific legislative provision to the contrary.

(b) Where the administrative act is issued in the course of the execution of a law having retrospective effect.

35 (c) In the case of an act issued in compliance with a judgment of the Court.

(d) Upon the annulment by the Court of an administrative act for formal reasons such as lack of due reasoning etc.

(e) If such retrospectivity is necessitated by the very nature of the act.

(f) In the case of an act revoking a previous illegal one »

The legality of the dismissal of a public officer with retrospective effect has also been considered in *Morsis and The Republic* (1965) 3 C L R 1; *HadjiGeorghiou v The Republic* (1968) 3 C L R 326, and by the Full Bench in *The Republic and Mozoras* (1970) 3 C L R 210. In the above cases the principle of non-retrospectivity of administrative acts as well as its exceptions, as they evolved by the Case Law in Greece and France and in Cyprus, were considered and it was held that the dismissal of a public officer cannot have retrospective effect but it being an individual administrative act, it becomes effective as from the date of its communication to him.

I am in full agreement with the judgments in the above cases and I see no reason for departing from them in the circumstances of the present case. Furthermore, the facts in *Morsis* case are more or less in line with the facts in the present case. In *Morsis and The Republic* the applicant, a bailiff and process-server, was convicted of the offence of false swearing and was sentenced on 17th March, 1962 to £10 -fine. An appeal against his conviction was dismissed on the 4th of June, 1962.

On the 12th July, 1962, the Public Service Commission dismissed him as from the 17th March, 1962. The applicant successfully challenged his dismissal on the ground that he had not been afforded an opportunity to be heard in the matter. On the 28th February, 1963, a letter was addressed to the applicant informing him that his dismissal was being contemplated on the ground of his conviction and was requested to appear before the Commission in order to make his representations. After the P S C heard his representations, it decided to dismiss him retrospectively as from the 17th March 1962, the date of his conviction. As a result, the applicant filed a recourse challenging the retrospectivity of his dismissal. Triantafyllides, P after making an elucidative reference to the Greek and French authorities on the matter and reviewing the case law of the Council of State in Greece, concluded as follows at pp. 12, 13:-

«In all the circumstances of this Case, as the decision in question of the Public Service Commission clearly offends against the principle of non-retrospectivity of administrative acts and as such decision does not - for the reasons stated
 5 already in this Judgment - fall within any recognized relevant exception to the said principle, I have reached the conclusion that the said decision has to be annulled to the extent to which it has been made to have retrospective effect before the date when it was taken, the 27th March, 1963; in this respect the
 10 submission of counsel for Applicant that the dismissal could only have been made retrospective with effect from the date when the Applicant appeared before the Commission, i.e. the 8th March 1963, is in my opinion, not well founded, because once it is a decision which could not have been made with
 15 retrospective effect, it could not have been made with effect from any date prior to its being taken.»

Morsis case was approved by the Full Bench in the case of *The Republic v. Mozoras* (supra) in which it was held at p 219 that:

«The canon that administrative acts or decisions cannot, in
 20 the absence of legislative authorization for the purpose, be given retrospective effect is a cardinal one, one of the most long-standing and firmly entrenched rules of public law; and the exceptions thereto have come to be well defined over the
 25 years (see, inter alia, Conclusions from the Decisions of the Greek Council of State 1929-1959 p. 197; *Traité de Contentieux Administratif* by Auby and Drago (1962) Vol. III, p. 18; *Odent on Contentieux Administratif* (1966) p. 1214; and our own case of *Morsis and the Republic* (1965) 3 C.L.R. 1).»

30 As to the contention of counsel for the respondents that the previous decision was annulled for formal reasons and therefore the case falls within one of the recognised exceptions as enumerated by L. Loizou, J. in *Savvides v. P.S.C.* (supra) at page 1755, namely, under paragraph (d), the answer may be found in
 35 the judgment of Triantafyllides, P. in *Morsis* case (supra) at pp. 11, 12 in which the same argument was advanced, and which I fully indorse for the purposes of the present case. It reads as follows:-

«The possibility of making a new administrative act to take effect on the date when a previous administrative act, of the

same content, would have taken effect had it not been annulled for only formal reasons, is, indeed, an exception to the general rule against retrospectivity; it has been touched upon by this Court in the judgment of *Kallouris and the Republic*, 1964 C.L.R. 313.

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In my opinion, however, the first dismissal of Applicant has not been annulled for formal invalidity but for substantial invalidity and, therefore, the second dismissal could not have been made retrospective, on the strength of the above. It was not a case where defective composition or other formal defect had prevented, an otherwise properly taken decision, from being valid, but it was a case where no proper disciplinary proceedings had taken place at all, because the Applicant had not been afforded an opportunity to be heard.»

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Bearing in mind the above, in all the circumstances of the present case, I have reached the conclusion that the decision of the respondents to the extent to which it has been made to have retrospective effect before the date it was taken, the 17th June, 1986, clearly offends against the principle of non-retrospectivity of administrative acts and as it does not fall within of the recognised exceptions to the said principle, has to be annulled.

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I come next to consider the validity of the decision concerning the dismissal of the applicant as from the date when the sub judice decision was taken.

It may be observed that in a recourse such as the present one the Court can either confirm or annul the subject matter of the recourse in whole or in part. Such course is open under Article 146.4(b). (See *Morsis and The Republic* (supra) at pp. 12 and 13 and the authorities referred to therein).

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The decision taken by the respondents on 22.11.1984 was annulled by me in Case No. 15/85 on the ground that being in the form of a disciplinary sanction the applicant should have been afforded the opportunity of having been heard. As a result of such decision, the respondent I.B.K. addressed on the 8th May, 1986, a letter to the applicant informing him of the disciplinary charges against him and requesting him to appear before it and make his representations on a fixed date. The applicant duly appeared on 17th June, 1986 according to the notification sent to him and was afforded the opportunity to be heard, when he made a general statement and refused to answer any questions put to him.

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On the material before me and for the reasons stated in the decision of the respondent I.B.K. I find that it was reasonably open to the respondents to reach their decision to dismiss the applicant and that such decision was well founded.

- 5 As to the contention of counsel for applicant that the sentence imposed was excessive, it was reasonably open to the respondent to impose such sentence in the circumstances of the case and the applicant has failed to establish that the respondents exercised their discretion in an improper manner in this respect.
- 10 As I said earlier the whole decision should not be annulled. It should be annulled only in part, as stated above, that is, it should be limited to the extent of having effect as from the date when it was taken, that is, the 17th June, 1986 and I make an order accordingly. In the circumstances, I make no order for costs.

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*Sub judice decision
partly annulled. No
order as to costs.*