1987 March 18

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS S. SARRIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, AND/OR
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 456/84).

Administrative law — General principles — Legality of administrative act — Governed by legislation in force at the time when it was made.

Administrative law — General principles — Subsidiary legislation — Once enacted by the competent organ, it should be complied with, until repealed or declared ultra vires by a judicial decision.

In virtue of the sub judice decision the respondent Commission appointed the three interested parties on contract to the post of School-Master of Chemistry, notwithstanding applicant's prionty in accordance with the list of candidates prepared under the Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972.

The sub judice decision was taken prior to the 9.7.84. On 8.3.86 the President of this Court pronounced in *Savva v. The Republic (1986) 3 C.L.R. 445* regulations 5 and 10 of the said Regulations as being ultra vires the enabling law.

Held, *annulling the sub judice decision*:(1) Once legislation of delegated nature has been enacted by the competent organ, it has to be complied with, until it is repealed or until it is found to be ultra vires by a judicial decision.

(2) It is a cardinal principle of administrative law that the legality of administrative acts is governed by the legislation in force at the time when they were made.

(3) It follows that the sub judice decision is governed by reg. 10(2), which at such time had not been declared as ultra vires. It is clear that the respondent

acted in direct violation of reg. 10(2).

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Savva v. The Republic (1986) 3 C.L.R.445;

Psara — Kronidou v. The Republic (1985) 3 C.L.R. 1900;

Kapsou v. The Republic (1983) 3 C.L.R. 1336;

Lordou and Others v. The Republic (1968) 3 C.L.R. 427.

Recourse.

Recourse against the decision of the respondent to appoint on contract to the post of Schoolmaster of Chemistry the interested parties in preference and instead of the applicant.

A.S. Angelides with L. Sarris, for the applicant.

R. Vrahimi (Mrs.), for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant of the present recourse impugns the decision of the respondent commission published in the daily press on 9.7.84 whereby the interested parties were appointed on contract to the post of School-Master of Chemistry in preference to and instead of the applicant.

The simple facts of this cases are very briefly as follows:

The applicant graduated in 1973 from «Metsovio» Polytechnic of Athens with a degree in Chemical Engineering. He applied to the respondent commission for appointment as a School-Master of Chemistry and the respondent emplaced his name in the List of Candidates for the year 1984 — 1985 under serial No. 20.

The names of the three interested parties were likewise placed by the respondent on the same list of Candidates under serial Nos. 28, 29 and 30.

The aforesaid List of Candidates was prepared by the

respondent Commission pursuant to the provisions of the Educational Officers (Teaching staff) (Appointments, Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972, as amended.

Regulation 10(2) of the aforesaid Regulations provides that «Appointments on contract are made in order of priority from the relevant lists of persons to be appointed».

The respondent E.S.C. in virtue of the decision hereby impugned, appointed on contract as School-Masters of Chemistry for a year i.e. from 1.9.84-31.8.85 all three interested parties in preference to and instead of the applicant who had obvious priority over the interested parties on the List of Candidates.

The respondent E.S.C. admits having acted contrary to the Regulation aforesaid in reaching at the sub-judice decision and maintains strict compliance with the list «would lead to unjust and unreasonable results as far as the interested parties are concerned».

After the hearing of this case was concluded and judgment was reserved, the learned President of the Court in delivering judgment in the case of *Efstathios Savva v. Republic* (1986) 3 C.L.R. 445 declared inter alia Regulations 5 and 10 as being ultra vires the enabling Law (Law 10/69). In the circumstances I have considered it expedient to direct the re-opening of the recourse in order to hear argument in the light of the judgment in Savva case (Supra).

At the re-opening of this case learned counsel for the applicant submitted that as the sub-judice decision was taken in 1984 its legality must be governed by the Regulations in question which were valid at the time having been declared ultra vires the enabling Law by a judicial decision pronounced as late as the 8th March 1986.

Learned Counsel for the respondent rightly conceded that regulation 5 and 10(2) were in force at the time of the sub judice decision and ought to have been followed by the respondent E.S.C. in reaching at the sub judice decision.

I have carefully considered the merits of this case as well as the

repercussions that might ensue in view of the judgment in *Savva case* (Supra) whereby Regulations 5 and 10 were declared ultra vires the enabling enactment.

As regards the merits of the case I hold the view that the respondent Commission could not disregard the Regulations in question which were valid at the time of the sub-judice decision and they had not up to that time been declared «ultra vires» by a judicial decision. In this connection I might as well repeat what I have stated in the case of *Psara — Kronidou v. The Republic (1983) 3 C.L.R. 1900 at p. 1903:* «These regulations are in effect legislation of a delegated nature enacted by the Council of Ministers pursuant to the provisions of s. 76 of the Public Educational Service Law of 1969 (Law 10/69) and as stated by the learned President of this Court in the case of *Kapsou v. The Republic (1983) 3 C.L.R. 1336 at p. 1341* 'Once such legislation was made by the competent organ, in this case by the Council of Ministers such legislation has to be complied with until it is repealed by the Council of Ministers... or until it is found to be ultra vires by a judicial decision (see in this respect, inter alia, Tsoutsos on the Administration and the Law 1979 pp 41, 88, 99, 116. Manual of Administrative Law by Spiliotopoulos (1977) p. 79 seq., and Delikostopoulos on Administrative Law Vol. A (1972) p. 47 et seq.)'»

Now in view of the judgment in Savva case (supra) whereby Regulations 5 and 10 were declared ultra vires the enabling law it must be borne in mind that the aforesaid judgment was pronounced on 8.3.86 whilst the sub-judice decision was reached at prior to the 9.7.84 i.e. the date of its publication in the daily press; and «it is a cardinal principle of Administrative law that the legality of administrative acts is governed by the legislation in force at the time when they were made» (vide *Lordou & others v. The Republic* (1968) 3 C.L.R. 427 at p. 433.)

So the sub judice decision is governed by regulation 10(2) and it is abundantly clear that the respondent E.S.C. acted in direct violation of the Regulation in question; therefore the sub judice decision must be annulled.

In the result the recourse succeeds; and the sub judice decision is hereby annulled. Let there be no order as to its costs.

Sub judice decision annulled.
No order as to costs.