

1988 October, 17

[A. LOIZOU, P., MALACHTOS, SAVVIDES, PIKIS, KOURRIS, JJ.]

IOANNIS FAKAS,

Appellant-Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Revisional Jurisdiction Appeal No. 695),

*Natural justice—Opportunity to be heard—Adverse administrative measure—
An opportunity to put forward the version of the person to be affected
should be given to such person—Dismissal of Educational Officer on
ground of public interest "In virtue of The Pensions (Secondary Education
Teachers) Laws, 1967 to 1979, section 8 (1) (e) and (2) and of any other
powers vested in this respect in the Council of Ministers"—Christodoulides
and Others v. The Republic (1984) 3 C.L.R. 1297 applied.*

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The appellant was first appointed by the Committee of Educational Service as a Teacher of Mathematics in Secondary Education in September, 1964 and up to 10th July, 1974 was serving in Technical Education when his services were terminated in the public interest. In August, 1974, after the coup d' etat on 15.7.1974, the appellant was reinstated and this situation was eventually legalised with the Decision of the Council of Ministers of the 15th May, 1975 under No. 13996.

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There were accusations against the appellant that during the coup d' etat was among the persons, who took over by force the premises of the Archbishopric; as a result an interdepartmental inquiry was carried out in 1977. The applicant was informed of the accusations against him and was given the opportunity to reply and did in fact reply.

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The Applicant's service was terminated on the grounds of public interest by decision of the Council of Ministers dated 31.1.1980. In fact, on 31.1.80 the Council took four decisions, whereby a number of Members of the Police, a number of Members of the Army, a number of Teachers in the

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Secondary Education and a number of Teachers in the Elementary Education were dismissed from office.

5 As a result sixty one recourses, including this course, were filed before the Supreme Court. The main ground of Law on which all these sixty one recourses were based have been dealt with by the Full Bench in the case of *Christodoulides and Others v. The Republic of Cyprus, through the Council of Ministers* (1984) 3 C.L.R. 1297.

Following the decision in *Christodoulides* case, this recourse was tried by the then President of this Court, who dismissed it. Hence this appeal.

10 This appeal before us was argued on only one ground, namely, that no opportunity was given to the appellant to answer the accusations against him. Counsel for the appellant submitted that the decision of the Court in *Christodoulides*, supra, at p. 1304, supports his position.

15 In this respect counsel argued that in 1979 statements were taken from other persons containing more serious accusations than those taken in 1975 for which the applicant was never informed and so he never had the opportunity to refute them.

20 In refuting this argument the learned President stated that there appears clearly from the contents of the personal files of the applicant, which I have perused, that the statements taken in 1979, like those taken in 1975, relate to the same conduct of the applicant in July 1974, when he was at the premises of the Archbishopric acting illegally as its Secretary and co-operating with those who had taken it over by force during the abortive coup d' etat in July, 1974.

25 Held, dismissing the appeal:

30 (1) It is true that in *Christodoulides* case it has been decided that the modern notions of Administrative Law require that the person against whom an adverse administrative measure is to be taken should have an opportunity to put forward his own version, nevertheless, further down on the same page it is stated that though the Council of Ministers did not specifically invite each applicant to make his representations, nevertheless each applicant had on divers occasions in the past, been informed of the allegations against him and were given the opportunity to refute them.

35 (2) The learned President followed the approach of the Full Bench in *Christodoulides* case. The statements taken in 1979 like those taken in 1975, relate to the same conduct of the appellant in July, 1974, and as he

was afforded, in relation to the statements taken in 1975, the opportunity and put forward his own version, there has not been any contravention of the rules of natural justice or the rules of proper administration.

Appeal dismissed. No order as to costs.

Cases referred to:

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Christodoulides and Others v. The Republic (1984) 3 C.L.R. 1297;

Vassiliou v. The Republic (1982) 3 C.L.R. 220;

Petrides v. The Republic (1983) 3 C.L.R. 216;

Marangos v. The Republic (1983) 3 C.L.R. 682.

Appeal.

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Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 29th November, 1986 (Revisional Jurisdiction Case No. 80/80)* whereby appellant's recourse against the termination of his services as a Schoolmaster in Secondary Education was dismissed.

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A. Markides, for the appellant.

A. Papasavvas, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU P.: The Judgment of the Court will be delivered by Malachtos, J.

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* (Reported in (1987) 3 C.L.R. 1247).

MALACHTOS J.: This is an appeal against the judgment of the previous President of this Court in Recourse No. 80/80 by which the application of the applicant to declare null and void and of no legal effect whatsoever the decision of the Council of Ministers communicated to him by letter dated 22.2.80 by which his services as a teacher in secondary education were terminated as from 1st February, 1980, was dismissed.

The appellant was first appointed by the Committee of Educational Service as a Teacher of Mathematics in Secondary Education in September, 1964 and up to 10th July, 1974 was serving in Technical Education when his services were terminated in the public interest. In August, 1974, after the coup d'etat on 15.7.1974, the appellant was reinstated and this situation was eventually legalised with the Decision of the Council of Ministers of the 15th May, 1975 under No. 13996.

As it appears from the administrative records there were accusations that the appellant during the coup d'etat was among the persons who took over by force the premises of the Archbishopric in Nicosia and was acting illegally as its secretary.

In 1975 a departmental enquiry was carried out and as a result the following letter was addressed to him by the investigating officer:

"As you know the appropriate authority by virtue of paragraph 1 of Part 1 of the Second Schedule of the Public Educational Service Law, 10/69, appointed me to carry out an enquiry, in connection with the accusations that you might have committed a disciplinary offence.

2. The case against you, as it appears from the material before me, consists in that you have acted in a way amounting to breach of the (d) and (a) fundamental duties of the Educational Officers provided in section 48 of the Public Educational Service Law, 10/69 because:

(a) you have collected on various occasions sums of money from churches without any authority from the lawful ecclesiastical authority; and

(b) you acted in a way amounting to recognition as ecclesiastical authority other than the lawful one.

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3. According to paragraph 4 of Part 1 of the Second Schedule of the Public Educational Service Law, 10/69, you have the right to be heard in connection with the case against you, and, consequently, I inform you that whatever you wish to tell me you may come to my office at 10 a.m. on the 29th or 30th August, 1975".

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By letter dated 29.8.75, in reply to the letter of the investigating officer, the appellant gives an explanation of his actions at the relevant time and in particular at page 2 thereof states the following:

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"On that day the responsible person for the collection was absent and I was requested by the already established in the Archbishopric a few days earlier Mr. Gennadios, to issue to the gentlemen who brought the money, the relevant receipt. As he, himself, affirms the money came to his possession immediately. I have already delivered to you the relevant copy of the said affirmation."

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By four Decisions of the Council of Ministers under Nos. 18.767, 18.768, 18.769 and 18.770 dated 31.1.1980, the services of a number of members of the Police, a number of members of the Army, a number of teachers in the secondary education and a number of teachers in the elementary education, respectively, were terminated.

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All the four decisions were to the effect that after a thorough consideration of the material which had been placed before it, the Council of Ministers reached the conclusion that it would be very detrimental to allow the aforementioned persons to remain in the

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Service of the Republic, and, consequently, decided that their services should be terminated in the public interest as from 1st February, 1980.

5 In Decision No. 18.767, it is stated that it was taken in the exercise of the power under sections 6(f) and 7 of the Pensions Law, Cap. 311, and of any other powers vested in this respect in the Council of Ministers; and Decisions No. 18.768, 18.769 and 18.770 are practically identical, except that in Decision No. 10 18.768 reference is made to section 6 of the Army of the Republic (Constitution, Enlistment and Discipline) Laws 1961 to 1975, in Decision No. 18.769, with which we are concerned, reference is made to section 8(1)(e) and (2) of the Pensions (Secondary Education Teachers) Laws, 1967 to 1979 and in Decision No. 18.770 reference is made to sections 51(1)(e) and (f) of the Elementary 15 Education Law, Cap. 166.

As a result of the aforesaid Decisions 61 recourses were filed, including the recourse of the appellant, No. 80/80, claiming a declaration of the Court that the said Decisions of the Council of Ministers were null and void and of no legal effect whatsoever.

20 The main grounds of law on which all these 61 recourses were based, are the following:

1. That there is no legal provision authorising the Council of Ministers to terminate the services of the applicants and so the decision taken is illegal being contrary to the Pensions Law, Cap. 311, the Army of the Republic Laws, 1967 to 1979; The Pensions (Secondary Education Teachers) Laws, 1967 - 1979; the Elementary Education Law, Cap. 166, the Public Educational Service Law, Law 10/69, the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, Law 3/77, as 25 amended, and Law 57/78.

30 2. That the termination of the services of the applicants was in the nature of a disciplinary measure and that it could not have been effected by means of administrative measures, and

3. That the said Decisions were taken without a proper enquiry, are not duly reasoned, and no opportunity to be heard was given to the applicants.

In view of the fact that all these recourses presented the above common question of law, a number of them was selected concerning all four decisions complained of and were heard together in the first instance by the Full Bench of this Court as a test case. Judgment was issued on 4th November, 1983 and the relevant report is *Petros Christodoulides and Others v. The Republic of Cyprus, through The Council of Ministers* (1984) 3 C.L.R. 1297. 5 10

As regards the first ground of law, that the Council of Ministers had no power to issue the Decision complained of, the relevant part of the judgment appears at page 1302 of the report and reads as follows:

"Among the provisions conferring relevant powers to the Council of Ministers, in addition to those vested in it by virtue of Article 54 of the Constitution, are sections 4 and 5 of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Suspension of Proceedings) Law, 1978 (Law 57/78). 15 20

It can, in our opinion, be concluded from reading together sections 4 and 5 of Law 57/78 that under section 5 the Council of Ministers may decide to terminate the services of a public official for reasons of public interest under the provisions of any Law, irrespective of whether or nor there was lodged against such official a complaint pursuant to the provisions of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Laws 3/77, 38/77 and 12/78). Because section 5 was enacted in order to provide to the Council of Ministers an alternative method, other than those enumerated in section 4 of the same Law, for achieving the objects set out in the preamble of Law 57/78. If under section 5 of Law 57/78 there could only be terminated in the public interest the services of a public official against whom a 25 30

complaint has been lodged under the aforementioned Laws 3/77, 38/77 and 12/78, then there would be no reason at all to enact section 5 in addition section 4 of Law 57/78, since as regard a public official against whom such a complaint was lodged it is expressly provided in section 4 that the Council of Ministers is empowered to terminate his services in the public interest or to retire him compulsorily in accordance with existing legislation".

As regards the second ground, that the decision of the Council of Ministers was a disciplinary measure, the relevant part of the judgment is at page 1303 and the following is stated:

"We cannot agree that, in the present instance, the relevant decisions of the Council of Ministers, when viewed in the context of all relevant considerations, can be found to be disciplinary measures. In our opinion, unlike disciplinary measures, they were not intended to punish the applicants but only to remove from the service of the Republic persons who could no longer, for reasons of public interest, be retained in it; and this is why some of the applicants had their services terminated by the sub-judice decisions of the Council of Ministers even though disciplinary proceedings against them had been concluded without the imposition of the punishment of the termination of their services or of compulsory retirement, and in respect of some others of them disciplinary proceedings were commenced but never concluded due to the termination of their services in the meantime by the Council of Ministers."

As regards the other grounds, the relevant part of the judgment appears at page 1304 and is as follows:

"Even though the decisions in question of the Council of Ministers were administrative measures not of a disciplinary nature the modern notions of Administrative Law require that the person against whom an adverse administrative measure is to be taken, should have an opportunity to put forward his own version, if he wishes to do so, so that the administration

when proceeding to decide on such administrative measure will have before it all relevant considerations (see, for example, the decisions of the Greek Council of State in cases 2976/1966, 1452/1967 and 1009/1972); and this approach is not only consonant with proper administration but, also, with basic notions of natural justice. 5

In the present cases we have perused thoroughly all the material which has been placed before us and we have reached, after very careful and anxious consideration, the conclusion that, though the Council of Ministers did not specifically invite each applicant to make his representations regarding the possibility of the termination of his services by the Council of Ministers, nevertheless each applicant had on divers occasions in the past been informed of the allegations against him and he had the opportunity to refute them if he wished to do so. 10 15

We are, therefore, quite satisfied that at least to the minimum extent necessary there has been substantial compliance with the need to ensure that each one of the applicants knew about the allegations concerning him and has had an opportunity to answer them; and that whatever each one of the applicants had had to say, on various occasions, in this respect, was before and must have been considered by, the Council of Ministers prior to reaching its sub judice decisions. 20

Before concluding this judgment we might add that even if on the face of them the sub judice decisions do not appear to contain specific reasons in relation to the termination of the services of each and every one of the applicants, nevertheless such reasons are to be derived from the relevant administrative records which have been placed before us (see, inter alia, in this respect, *Vassiliou v. The Republic* (1982) 3 C.L.R. 220, 229, *Petrides v. The Republic* (1983) 3 C.L.R. 216, 220 and *Marangos v. The Republic*, (1983) 3 C.L.R. 682, 692); and we are of the view that these reasons rendered, in each particular case, reasonably open to the Council of Ministers to terminate the services of the applicant concerned". 25 30 35

It was submitted by counsel for applicant in the case in hand before the learned President, that there was no due enquiry by the Council of Ministers and, in any event, the case was not duly studied by them as a whole and by each one of its Members.

5 It was submitted that the conduct of the applicant, after he was reemployed, was not examined from 1974 up to 31.1.80 when his services were terminated. In 1979 statements were taken from other persons containing more serious accusations than those taken in 1975 for which the applicant was never informed and so he never had the opportunity to refute them. He further submitted
10 that the applicant was treated in a manner contrary to the doctrine of equality safeguarded by Article 28 of the Constitution because other public officials facing much more serious charges were not dismissed from the Service and that at the time of the alleged misconduct the applicant was not in the Service of the Government.

The learned President in dismissing the recourse made reference to the *Christodoulides* case and said that in so far as the judgment in that case covers any of the issues raised in the present case too, he was bound by, and endorsed the approach
20 adopted by the Court and he need not repeat the relevant parts which are deemed to be incorporated by reference in his judgment. He then proceeded and gave his reasons for dismissing each one of the submissions of counsel for applicant and, in particular, as regards the ground that the applicant was not given the opportunity to answer the accusations against him, had this to say
25 at p.1251:(1987) 3 C.L.R.): "There appears clearly from the contents of the personal files of the applicant, which I have perused, that the statements taken in 1979, like those taken in 1975, relate to the same conduct of the applicant in July 1974, when he was at the premises of the Archbishopric acting illegally as its Secretary and cooperating with those who had taken it over by force during the abortive coup d'etat in July, 1974."

As the applicant was afforded, in relation to the statements

taken in 1975, an opportunity to put forward his own version regarding his presence at the Archbishopric during the coup d'etat in July, 1974, I am satisfied that in the present case there has not occurred an actual contravention of the rules of natural justice or of the principles of proper administration due to the fact the applicant was not informed of the contents of the statements taken in 1979, which, it seems, do not disclose any new sinister conduct by the applicant."

This appeal before us was argued on only one ground, namely, that no opportunity was given to the appellant to answer the accusations against him. Counsel for the appellants submitted that the decision of the Court in *Christodoulides*, supra, at p. 1304, supports his position.

It is true that in *Christodoulides* case it has been decided that the modern notions of Administrative Law require that the person against whom an adverse administrative measure is to be taken should have an opportunity to put forward his own version, nevertheless, further down on the same page it is stated that though the Council of Ministers did not specifically invite each applicant to make his representations, nevertheless each applicant had on divers occasions in the past, been informed of the allegations against him and was given the opportunity to refute them.

Having carefully considered the arguments of counsel for the appellant on the issue before us, we must say that he failed to satisfy us that the learned President erred in any way in deciding this issue in the way he did. We must further say that we fully agree with his reasoning, as in fact he followed the approach of the Full Bench in *Christodoulides* case. As stated in his judgment the statements taken in 1979 like those taken in 1975, relate to the same conduct of the appellant in July, 1974, and as he was afforded, in relation to the statements taken in 1975, the opportunity and put forward his own version, there has not been any contravention of the rules of natural justice or the rules of proper administration.

For the reasons stated above, this appeal is dismissed.

On the question of costs, we make no order.

*Appeal dismissed.
No order as to costs.*