

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24

[ZEKIA, P., VASSILIADES, TRIANTAFYLIDIS, MUNIR,  
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION  
CHARALAMBOS CHARALAMBIDES,

CHARALAMBOS  
CHARALAMBIDES  
and

THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS

and

THE REPUBLIC OF CYPRUS, THROUGH

(a) THE MINISTER OF FINANCE,

(b) THE COUNCIL OF MINISTERS,

*Applicant,*

*Respondent.*

(Case No. 167/62)

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*Administrative Law—Administrative act—Erroneous administrative act—Revocation of—Principles governing the matter—Circumstances in which revocation is not allowed—Creation of a situation or status by the erroneous act—Lapse of time—In the instant case an erroneous decision dated 22nd May 1961 whereby the applicant was given the status of a pensionable officer was not allowed to be withdrawn by a subsequent decision dated July 1962 purporting to change the status so acquired of the applicant from a pensionable one to a non-pensionable one.*

*Pension and gratuity—Elementary school-teacher—Erroneous decision dated the 22nd May 1961 for the payment of gratuity and reduced pension, instead of gratuity only in respect of his service up to 15th August 1960—Elementary Education Legislation : Laws 18/33, 3/44 (section 23) 13/47 (section 3) and 12/54 (section 15)—Subsequent decision of the Council of Ministers, dated July 1962 in substitution or revocation of their former aforesaid decision of May 1961—Not allowed to stand.*

Applicant filed the present recourse, under Article 146 of the Constitution against the decision of the Council of Ministers, which was communicated to him by letter dated 7th July, 1962, whereby it was decided to award a gratuity to the applicant in respect of his service as a school-teacher up to the 15th August, 1960, instead of a reduced pension and gratuity in respect of such service as it had been erroneously decided by them earlier viz. on the 22nd May, 1961.

The essence of the case for the applicant is that once an administrative decision has been taken whereby a situation has been created, on the basis of certain circumstances, then the Authority or Authorities taking such a decision cannot subsequently revoke or withdraw that decision to the detriment of the individual concerned.

The substance of the case for the respondent is that the Council of Ministers, having been misled by the Education Authorities of the Greek Communal Chamber in forwarding to the appropriate authorities of the Ministry of Finance Form Ed. 43, which had been filled in by the applicant, when they decided to award reduced pension and gratuity to the applicant in May, 1961, were entitled to reconsider the earlier decision and having come to the conclusion that the applicant was not entitled to pension but was only entitled to a gratuity, to award the applicant a gratuity under the provisions of Law 18/1933 instead of a reduced pension and gratuity.

The basic issue before the court is whether it was open to the Council of Ministers in all the circumstances of this case to revoke over a year later a decision it had taken erroneously on the 22nd May, 1961, to pay a reduced pension and gratuity to the applicant to the detriment of the applicant.

*Held*, (1) applicant having been given the status of a pensionable officer, it was not subsequently open to the Council of Ministers over a year later to revoke their decision confirming such status and substitute it by a new one which resulted in changing the acquired status of the applicant from a pensionable one to a non-pensionable one and thus depriving him of a monthly pension which he had been receiving with effect from the 1st September, 1960.

(2) Having regard to all the circumstances of this case and the fact that the Greek Communal Chamber had embarked on a course of action, which was subsequently confirmed by decision of the Council of Ministers, and having regard to the lapse of over a year between the first decision of the Council of Ministers and its subsequent revocation by a new decision, the court is of the opinion that much more than a "reasonable time" has elapsed in this case in the sense that "illegal administrative acts, through which a favourable situation has been created for the subject, may be revoked only if there is no lapse of a long interval of time and within reasonable time".

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24  
—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24

—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS

(3) The decision of the Council of Ministers to revoke its earlier decision of the 22nd May, 1961, and to substitute it by a new one, which was conveyed to the applicant by the letter of the Director of Personnel Department dated 7th July, 1962, is null and void and of no effect whatsoever and that the earlier decision of the Council of the 22nd May, 1961, awarding a reduced pension and gratuity to the applicant must, therefore, stand.

*Decision complained of  
declared null and void.*

#### **Recourse.**

Recourse against the decision of the Council of Ministers, which was communicated to him by letter dated 7th July, 1962, whereby it was decided to award a gratuity to the applicant in respect of his service as a school-teacher up to the 15th August, 1960, instead of a reduced pension and gratuity in respect of such service, as erroneously decided earlier on the 22nd May, 1961.

*Fr. Markides with A. Triantafyllides, for the applicant,*

*K. C. Talarides, counsel of the Republic, for the respondent.*

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Munir.

MUNIR, J.: In this case the applicant is complaining by a recourse under Article 146 of the Constitution, against the decision of the Council of Ministers, which was communicated to him by letter dated 7th July, 1962, whereby it was decided to award a gratuity to the applicant in respect of his service as a school-teacher up to the 15th August, 1960, instead of a reduced pension and gratuity in respect of such service.

The applicant, who was born on the 15th December, 1905, commenced service as an elementary school-teacher in the year 1928.

In 1933 provision was made by Law 18/1933 for the payment to elementary school-teachers, such as the applicant, of only a gratuity on retirement. By Law 18/1933 the retiring age of school-teachers was fixed at 60 years and a

male teacher with at least 15 years of service was entitled on retirement to receive such a gratuity but was not entitled to any pension. Any male teacher with 15 years service and any female teacher with 10 years service could, however, be allowed to retire before attaining the retiring age of 60.

By the enactment of Law 3/1944 elementary school-teachers became pensionable, *i.e.* became entitled to receive a pension on retirement instead of a mere gratuity as was the case previously. The pension payable to such elementary school-teachers on retirement was calculated at the rate of 1/720th of the teacher's salary for each complete month of service. The usual provision was also made for commuting the pension to a reduced pension and gratuity at the option of the teacher concerned. The age of compulsory retirement remained unaltered at 60.

By section 23 of Law 3/1944, there were excluded from the provisions of that law relating to the payment of pension to school-teachers those teachers, such as the applicant, who were already on the Permanent Staff Register on or before the 1st January, 1944, *i.e.* when Law 3/1944 came into operation. Such teachers were given the option to elect in writing to continue to remain under the provisions of Law 18/1933 and to continue to be entitled to receive a gratuity only and not to receive a pension under Law 3/1944.

The applicant by letter dated 24th July, 1944, addressed to the then Director of Education, elected to remain, for retirement benefit purposes, under Law 18/1933 and thus chose to receive on retirement a gratuity but no pension.

By Law 13/1947 compulsory retirement age of school-teachers was changed from 60 to 55 years and the rate of pension was changed from 1/720th to 1/600th. The vested rights of teachers, such as the applicant, already in the service on the coming into operation of Law 13/1947 were again saved by section 3 of that law, which gave the teachers concerned a further choice to continue to remain, for retirement benefit purposes, under Law 18/1933 or to come under the pension provisions of the new Law 13/1947.

The applicant by letter dated 22nd September, 1947, and addressed to the then Director of Education, again elected to continue to remain under the provisions of Law 18/1933 relating to the payment of a gratuity only to teachers on retirement.

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24

—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24

—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS

By section 15 of Law 12/1954 it was provided, *inter alia*, that any elementary school-teacher who had elected to remain under the retirement benefit provisions of Law 18/1933 could, with the permission of the Governor, revoke such election at any time before attaining the age of 55 years. In 1955 the then Department of Education sent out a circular (Circular No. 182 dated 15th October, 1955) to all teachers, including the applicant, who were affected by this new amendment informing them about it and about the option given to them by section 15 of Law 12/1954.

The applicant did not specifically apply for the permission of the Governor under section 15 of Law 12/1954 before attaining the age of 55. On the 11th October, 1959, however, the applicant completed a certain form of the then Education Department known as "Form Ed. 43" which was the form used by school-teachers who were entitled to a *pension* or a reduced pension and gratuity, and forwarded it to the then Director of Education, in which form he requested, and applied for, a *reduced pension* and gratuity. A teacher who was only eligible and entitled to receive a gratuity under Law 18/1933 was not entitled to fill in Form Ed. 43 which could only be filled in by those who enjoyed pensionable rights under Law 3/1944 or Law 13/1947.

The applicant submitted Form Ed. 43 to the Director of Education with a covering letter of even date in which he claimed that his date of birth was the 15th December, 1904, and not the 15th December, 1905. By a letter dated 19th October, 1959, the Greek Education Office replied to the applicant regarding the question of the date of the applicant's birth and informed him that his official date of birth was that given by him when he originally entered the service, namely 15th December, 1905, and that consequently the date of his retirement was the 31st August, 1960. No mention was made in this letter about the non eligibility of the applicant to receive a pension or reduced pension and gratuity as applied for by him in Form Ed. 43.

The applicant was assigned duties for the school year 1960-1961 but left his work on the 16th October, 1960, on account of illness. He received sick-leave with full pay until 30th November, 1960. On the 1st December, 1960, applicant applied to the Director of Greek Education for *permission to retire on medical grounds*.

On the 21st February, 1961, a Government Medical Board examined the applicant and found him fit to return to work. The applicant, however, did not return to work and by a

letter dated the 20th March, 1961, again applied for permission to retire which was approved by the Greek Communal Chamber on the 22nd May, 1961, and such approval was communicated to the applicant by a letter dated 31st May, 1961, in which it was stated that the applicant's retirement was approved as from 31st August, 1960, and that he would be entitled to pension on the basis of 720ths.

As the applicant's years of service had been during the colonial administration, he was entitled to receive whatever retirement benefits he was entitled to, under the Elementary Education Laws, from the Republic. The Director of Greek Education completed a form entitled "Particulars to be furnished by the Director of Education on the retirement of teachers eligible for pension or gratuity under Part V" and forwarded it to the Chief Establishment Officer. The Chief Establishment Officer, who was not in possession of the personal file of the applicant, forwarded the said form to the Council of Ministers on the 22nd May, 1961, which approved the payment to the applicant of a reduced pension and gratuity.

The applicant challenged the above mentioned decision of the Council of Ministers, by a recourse to the Supreme Constitutional Court (Case No. 141/61). It was then stated by the respondent, apparently for the first time, that the applicant was not entitled to receive a pension but was only entitled to a gratuity, and that a submission would be made to the Council of Ministers to reconsider its earlier decision of the 22nd May, 1961. Thereupon the Applicant was allowed to withdraw his recourse in case No. 141/61 and it was dismissed accordingly.

The Council of Ministers subsequently reconsidered the matter and decided to award to the applicant only a gratuity of £1,854 in respect of his service up to the 15th August, 1960. The gratuity of £1,179.873 mils and reduced pension at £283.169 mils, from 1st September, 1960 to 31st May, 1962, i.e. £495.543 mils, which was stated to have been paid to the applicant "in error" was to be deducted from the gratuity of £1,854. This decision, which is the subject-matter of this recourse, was communicated to the applicant by the Director of Personnel Department of the Ministry of Finance by a letter dated 7th July, 1962. The applicant accepted the balance of £178,584 mils with full reservation of his rights by a letter written to the Greek Education Office on the 31st July, 1962.

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24  
—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24

—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS

The essence of the case for the applicant is that once an administrative decision has been taken whereby a situation has been created, on the basis of certain circumstances, then the Authority or Authorities taking such a decision cannot subsequently revoke or withdraw that decision to the detriment of the individual concerned. In support of this principle and the limited circumstances in which an Authority performing an administrative act is empowered to revoke or withdraw such an act, even though such act was originally performed irregularly or unlawfully, Counsel for applicant cited numerous judicial and academic authorities (including *Waline* "Droit Administratif", 8th Edition, p. 521 at p. 522 ; *Stassinopoulos* "Traite des Actes Administratifs" (1954 Edition), pp. 241-247, at p. 242).

The substance of the case for the respondent is that the Council of Ministers, having been misled by the Education Authorities of the Greek Communal Chamber in forwarding to the appropriate authorities of the Ministry of Finance Form Ed. 43, which had been filled in by the applicant, when they decided to award reduced pension and gratuity to the applicant in May, 1961, was entitled to reconsider the earlier decision and having come to the conclusion that the applicant was not entitled to pension but was only entitled to a gratuity, to award the applicant a gratuity under the provisions of Law 18/1933 instead of a reduced pension and gratuity.

The basic issue before the court is whether it was open to the Council of Ministers in all the circumstances of the case to revoke over a year later a decision it had taken on the 22nd May, 1961, to pay a reduced pension and gratuity to the applicant to the detriment of the applicant.

It will be seen from the facts of this case, which have been summarised in this judgment, that when the applicant had applied on the 11th October, 1959, for the payment to him of a pension on Form Ed. 43, the applicant must be presumed genuinely to have believed that he was entitled to a pension by virtue of the provisions of Law 12/1954. If he did not so believe, nothing would have been easier for him than to apply under section 15 of Law 12/1954 to the Governor for permission to revoke his earlier election before attaining the age of 55 which he had not yet attained on the 11th October, 1959, when he completed Form Ed. 43.

From this point on neither the then Director of Greek Education nor the then Chief Establishment Officer, to whom Form Ed. 43 was forwarded by the Director of Education, informed the applicant that he was not entitled to a pension. If the applicant had been so informed he would have still been entitled to exercise his option under section 15 of Law 12/1954 before completing the age of 55 which he would have done according to the date officially accepted as the date of his birth, on the 15th December, 1960. By the letter which was written to him on the 19th October, 1959, by the Greek Education Office, which only touched upon the date of applicant's birth, the applicant assumed that the necessary formalities had been sufficiently complied with and that he was entitled to receive a pension. The net result was that on the 22nd May, 1961, the Council of Ministers, also being under the impression that the applicant was entitled to receive a pension, awarded the applicant the reduced pension and gratuity for which he had applied by Form Ed. 43. This being so the applicant, through no fault of his own, was awarded and received a reduced pension from the 1st September, 1960 till the 31st May, 1962, and a lump sum as a gratuity, as a result of the decision of the Council of Ministers.

Counsel for the respondent has argued that if the applicant was misled in any way and if any blame was to be attached for the error as to the eligibility of the applicant to a pension, it was not the Republic as such but the Greek Communal Chamber who were responsible. It may well be that the organs or authorities of the central administration of the Republic and the authorities of the Greek Communal Chamber, which is also an organ in the Republic, may be able to apportion blame for the error between themselves. But, *vis a vis* the citizen, in this case the applicant, and the State, the citizen is entitled to look to the State as a whole and if a situation has been created by composite acts or decisions of the various organs or authorities of the State then, as far as the citizen is concerned, the responsibility must lie with the State as a whole.

Without going into the general principles of the safeguarding of vested rights, particularly those acquired by public officers, and without going into the realm of the revocation or withdrawal of an administrative act and the circumstances in which it is permissible for an administrative act to be revoked or withdrawn it will be seen that in this case the Council of Ministers, by its decision in question,

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24

—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS



1963  
March 18,  
1964  
Oct. 20,  
Nov. 24

—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS

not only affected the rights which had been acquired by the applicant as a result of the previous decision in question of the Council of Ministers by the aforesaid subsequent decision, which is the subject-matter of this recourse, also changed the very legal status of the applicant as a pensionable officer which had already crystallized as a result of the previous course of action of the Greek Communal Chamber. Thus the applicant having been given the status of a pensionable officer, it was not subsequently open to the Council of Ministers over a year later to revoke their decision confirming such status and substitute it by a new one which resulted in changing the acquired status of the applicant from a pensionable one to a non-pensionable one and thus depriving him of a monthly pension which he had been receiving with effect from the 1st September, 1960.

In this connection it is relevant to note the following passage from Stassinopoulos text-book "Discourses in Administrative Law", 1957 Ed. , p. 258 :—

"The existing legislation does not regulate by general rules the question as to when it is permissible to revoke an administrative act. This matter is regulated by general principles which have been formulated through decisions of the Council of State. In accordance with such principles there is a distinction being made between revocation of lawful and revocation of illegal administrative acts. The lawful administrative acts out of which have flown rights for the subject cannot be revoked. Illegal administrative acts, through which a favourable situation has been created for the subject, may be revoked only if there is no lapse of a long interval of time and within reasonable time."

Having regard to all the circumstances of this case and the fact that the Greek Communal Chamber had embarked on a course of action, which was subsequently confirmed by decision of the Council of Ministers, and having regard to the lapse of over a year between the first decision of the Council of Ministers and its subsequent revocation by a new decision, the Court is of the opinion that much more than a "reasonable time" has elapsed in this case in the sense of the passage quoted above.

For all the reasons given above the Court is of the opinion that the decision of the Council of Ministers to revoke its earlier decision of the 22nd May, 1961 and to substitute it

by a new one, which was conveyed to the applicant by the letter of the Director of Personnel Department dated 7th July, 1962, is null and void and of no effect whatsoever and that the earlier decision of the Council of the 22nd May, 1961, awarding a reduced pension and gratuity to the applicant must, therefore, stand.

In all the circumstances of this case the Court orders the respondent to pay the applicant £30 towards his costs.

*Decision complained of declared null and void. Order for costs as aforesaid.*

1963  
March 18,  
1964  
Oct. 20,  
Nov. 24

—  
CHARALAMBOS  
CHARALAMBIDES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH—  
(a) THE  
MINISTER  
OF FINANCE  
(b) THE  
COUNCIL  
OF MINISTERS