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June 3

[TRIANTAFYLIDIS, J]

MATHEOS ZENIOS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION  
AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MATHEOS ZENIOS,

*Applicant,*

and

THE REPUBLIC OF CYPRUS, THROUGH  
1 THE PUBLIC SERVICE COMMISSION,  
2 THE MINISTER OF FINANCE,

*Respondent.*

(Case No 32/66)

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*Public Officers—Promotions—Cancellation of Applicant's promotion to the post of Foreman, 1st grade, Water Development Department—Age of compulsory retirement being fifty-five years under paragraph 2(1) of the Government Employees Provident Fund Regulations (see Subsidiary Legislation, Vol I p 649)—Applicant's said promotion made on the mistaken assumption that he had not yet attained the age of fifty-five years viz the age of compulsory retirement from service by operation of law—Whereas in fact he had already attained such age—Cancellation of such promotion by its author, i.e. the Public Service Commission, Respondent 1, on discovering the aforesaid error—Validity of such cancellation—Public interest—Although the error was not due to any fraudulent activity on the part of the Applicant—Still the erroneous promotion has to be cancelled as being contrary to law and entirely void ab initio—Its invalidity is such as to require its revocation at any time on grounds of public interest—Charalambides and the Republic 1964 C L R 326, distinguished—See, also, herebelow*

*Public Officers—Pensions—Cancellation of Applicant's promotion to a pensionable post and reversion to a non-pensionable status—Consequent administrative action—Duly taken according to law—See also above*

*Administrative Law—Administrative acts or decisions—Revocation or withdrawal thereof—Principles applicable—See above under Public Officers*

*Administrative acts or decisions—Revocation of—Principles applicable—See above*

*Revocation—Revocation of administrative acts or decisions—Or cancellation of same—See above.*

*Costs—Award to unsuccessful Applicant of part of his costs—In recognition that he was put into a complex situation through no fault of his own.*

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The Applicant was born on the 25th November, 1908. He entered the service of the Water Development Department in February, 1945. On the 14th February, 1962, while he was working in the said Department as a foreman on a weekly basis, he applied for appointment in the Government service, to the post of Foreman, 2nd grade, which was a permanent, but not a pensionable, post in the public service. On applying for such post Applicant furnished Respondent 1 with an official certificate of birth in which the date of his birth was correctly stated as above; this certificate, which was attached to his application, has remained ever since in the possession of Respondent 1. On the 31st July, 1962, Applicant was appointed to the post of Foreman 2nd Grade, as applied for.

On the 2nd February, 1963, Applicant applied for a promotion stating that he was fifty-four years old. On the 19th August, 1964, the Director of the Department of Water Development recommended three Foremen, 2nd Grade, one of whom was Applicant, to be promoted to the post of Foreman, 1st grade (*supra*). In his relevant letter the Director stated the date of birth of the Applicant to be the 19th October, 1910; thus, Applicant was made to appear two years younger than he actually was, whereas, in fact, he had already become fifty-five years old on the 25th November, 1963, (*supra*); and according to paragraph 2(1) of the Government Employees Provident Fund Regulations (See Subsidiary Legislation, Vol. I p. 649) the age of retirement of the Applicant was that of fifty-five years. It seems that the Director gave in his aforesaid letter of the 19th August, 1964, the incorrect date of Applicant's birth, *viz.* the 15th October, 1910, basing himself on a record-card of the Applicant in the files of the department and which showed the date of birth of the Applicant as the 15th October, 1910.

On the 1st September, 1964, the Respondent 1 Commission decided to promote Applicant to the post of Foreman, 1st grade, a post which is permanent as well as pensionable.

Sometime in July, 1965, the mistake with regard to Applicant's date of birth was discovered and, eventually, on the 22nd De-

ember, 1965, the Respondent I Public Service Commission met and considered the matter of the Applicant and "bearing in mind that he should have retired from the Service on attaining the age of 55 years on the 25th November, 1963," (*supra*), decided to cancel its aforesaid decision of the 1st September, 1964 (*supra*). It is against this decision of the 22nd December, 1965, revoking the previous one of the 1st September, 1964, that the Applicant made the present recourse under Article 146 of the Constitution.

The Court, in dismissing the recourse, but taking the exceptional course of awarding to the unsuccessful Applicant an amount towards his costs:

*Held*, (1) I do not think that the promotion of the Applicant was induced by any fraudulent conduct on his part. On the contrary in his two applications for promotion in early 1963, he stated his age correctly. Moreover, in the personal file of the Applicant with the Commission there existed all along an official certificate of birth giving his correct date of birth, *viz.* the 25th November, 1908—and such certificate had been supplied by the Applicant himself in 1962 when he applied for appointment as Foreman, 2nd grade.

(2) It is common ground that a period of over a year elapsed between the promotion of the Applicant and the revocation of the decision to promote him. I do not, have, however, to consider in the particular circumstances, whether the intervening period was such as to preclude revocation, of the promotion of the Applicant; the reason being that such promotion not only was contrary to law—in the sense that it was effected when Applicant could no longer be lawfully in service—but its invalidity was of such a nature as *to require its revocation on grounds of public interest*; it, therefore, could be revoked at any time, not being capable of becoming irrevocable after the lapse of reasonable period of time after it was taken and through the creation of vested interests (See Conclusions from the Jurisprudence of the Greek Council of State 1929–1959, p. 202; Stasinopoulos on the Law of Administrative Disputes (1964) p. 232; Kyriakopoulos on Greek Administrative Law, 4th ed. Vol. II, p. 415 et seq.).

(3) In this respect—*i.e.* revocation on the ground of public interest it is useful to refer to the decision of the Greek Council of State in case No. 424/1932 (Vol. 1932 A, p. 1249). (*Note*: The passage is set out in the judgment of the Court, post). The same approach on the ground of public interest has been consist-

ently upheld in subsequent years by the Greek Council of State: see e.g. its decisions in cases Nos. 230/1954 (Vol. 1954 A, p. 275) and 1504/1955 (Vol. 1955 C, p. 205).

(4) Moreover, on the Applicant attaining his retirement age in November, 1963, (*supra*) his status as a public officer came to an end by operation of law, and any act done thereafter and treating him as a public officer was in reality entirely void and incapable of creating legal consequences. In this respect it is useful to refer to the case of *Fontbonne*, decided by the French Council of State on the 3rd February, 1956 (Recueil des Décisions du Conseil d'Etat, Collection Lebon, 1956, p. 45) (*Note*: the full passage is set out in the judgment of the Court, *post*).

(5) In the result, this recourse must be dismissed. *Charalambides* and *The Republic* 1964 C. L. R. 326, distinguished.

(6) But in the special circumstances of this case I have decided not only not to make an order for costs against the Applicant, but on the contrary, to take the exceptional course (see *Contopoulos* and *the Republic* 1964 C. L. R. 347) of awarding to the unsuccessful Applicant an amount towards his costs, in recognition of the fact that he was put into a complex situation, and he had to take proceedings, through no fault of his own. I therefore, award to Applicant, and against Respondent, £10 towards costs.

*Application dismissed. Order for costs as aforesaid.*

#### Cases referred to:

*Charalambides* and *The Republic* 1964 C.L.R. 326 distinguished.

*Contopoulos* and *The Republic* 1964 C.L.R. 347:

#### *Decisions of the Greek Council of State:*

Nos. 424/1932 (Vol. 1932 A, p. 1249): 230/1954 (Vol. 1954 A, p. 275): 504/1955 (Vol. 1955 C, p. 205).

#### *Decision of the French Council of State:*

Arrêt *Fontbonne* of the 3rd February, 1956, in Recueil des Décisions du Conseil d'Etat, Collection Lebon, 1956, p. 45.

#### Recourse.

Recourse against a decision of Respondent 1 whereby Applicant's promotion to the post of Foreman, 1st grade, in the

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service of the Water Development Department, was cancelled.

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

*K. Talarides with M Spanos, Counsel of the Republic, for  
the Respondents*

*Cur. adv. vult*

The following Judgment was delivered by:

TRIANTAFYLLIDES, J · By this recourse the Applicant complains against a decision of Respondent 1, the Public Service Commission, whereby his promotion to the post of Foreman, 1st grade, in the service of the Water Development Department, was cancelled, such decision was communicated to the Applicant by letter dated the 23rd December, 1965 (see *exhibit 1*).

Applicant also complains against a decision of Respondent 2, the Minister of Finance, to treat him on retirement as a non-pensionable officer, entitled only to a gratuity, instead of as a pensionable one, in the alternative, the claim against Respondent 2 has been framed as a complaint for an omission to treat the Applicant as being pensionable.

The relevant events, in this Case, are shortly as follows

The Applicant was born at the village of Tembria on the 25th November, 1908

He entered the service of the Water Development Department in February 1945

On the 14th February, 1962, while he was working in the said Department as a Foreman on a weekly basis, he applied for appointment in the Government service, to the post of Foreman, 2nd grade, which was a permanent, but not a pensionable, post in the public service (His application for appointment is *exhibit 3* in these proceedings)

On applying for such post he furnished Respondent 1 with an official certificate of birth in which the date of his birth was correctly stated, this certificate, which was attached to his application (*exhibit 3*), has remained ever since in the possession of Respondent 1

On the 27th June, 1962, the Applicant was offered by Respondent 1 appointment to the post of Foreman, 2nd grade,

(see *exhibit 12*); the formal instrument of his appointment was issued on the 31st July, 1962, (see *exhibit 13*).

On the 2nd February, 1963, the Applicant applied to his Head of Department for a promotion; he stated at the time that he was fifty-four years old (see *exhibit 7*). On the 26th April, 1963 the Applicant repeated his request, stating again his age to be fifty-four years (see *exhibit 8*).

On the 19th August, 1964, the Director of the Department of Water Development recommended three Foremen, 2nd grade, one of whom was Applicant, to be promoted to the post of Foreman, 1st grade (see *exhibit 4*). In his relevant letter the Director stated the date of birth of the Applicant to be the 15th October, 1910; thus, Applicant was made to appear two years younger than he actually was, whereas, in fact, he had already become fifty-five years old on the 25th November, 1963; and according to paragraph 2(1) of the Government Employees Provident Fund Regulations (see Subsidiary Legislation vol. I p. 694) the age or retirement of the Applicant was that of fifty-five years.

Mr. Konteatis, the Director of the Department concerned, has testified that the incorrect date of birth of the Applicant, which found its way into *exhibit 4*, was taken from a record-card (*exhibit 10*) of the Applicant, in the files of the Department, which showed the date of birth of the Applicant as the 15th October, 1910. Mr. Konteatis has explained, in the course of his evidence, that dates of birth on such record-cards are, according to standing practice, filled in by clerical staff, on production by the labourer or foreman concerned of a birth certificate.

On the 1st September, 1964, Respondent 1 decided to promote the Applicant to Foreman, 1st grade, (see the minutes *exhibit 5*). This post is a pensionable one.

On the 12th July, 1965, Mr. Konteatis, having discovered that the Applicant was born on the 25th November, 1908, wrote in the matter to Respondent 1, recommending, in the circumstances, the termination of the services of the Applicant at the end of July, 1965, (see *exhibit 11*). In his letter Mr. Konteatis stated, also, that the Applicant, after repeated requests to produce a birth certificate, had produced one dated the 4th July, 1965, in which it was stated that he was born in October, 1910; this birth certificate had been issued by the Village Authority of his village, Tembria (see *exhibit 9*).

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On the 21st July, 1965, the Ministry of Agriculture and Natural Resources, under which comes the Department of Water Development, wrote to the Applicant informing him that he would be "pensioned off" as from the 1st October, 1965, having been placed on leave as from the 1st August, 1965, (see *exhibit 2*).

On the 22nd December, 1965, Respondent 1 met and considered the matter of the Applicant and "bearing in mind that he should have retired from the Service on attaining the age of 55 years on 25.11.63" decided to cancel its decision of the 1st September, 1964, promoting the Applicant to Foreman, 1st grade (see the minutes *exhibit 6*).

As a result *exhibit 1* was written to the Applicant on the 23rd December, 1965.

The central issue in this Case is whether or not the decision of Respondent 1, taken as above on the 22nd December, 1965, revoking the promotion of the Applicant to Foreman, 1st grade, is a valid one.

I do not think that the promotion of the Applicant was induced by any fraudulent conduct on his part. It may be that his Head of Department, in recommending his promotion, relied on a wrong date of birth of the Applicant—(set out in his aforesaid record-card)—but, in the absence of definite proof, I am not prepared to find that in fact the Applicant gave a wrong date of birth, to be inserted in his record-card, for the purpose of securing promotion to Foreman, 1st grade, after he would have reached the age of fifty-five years.

On the contrary in his two applications for promotion (in early 1963—see *exhibits 7* and *8*) the Applicant has stated his age correctly, as being fifty-four years at the time.

Moreover, in the personal file of the Applicant with the Commission there existed all along an official certificate of birth giving his correct date of birth—the 25th November, 1908—and such certificate had been supplied by the Applicant himself in 1962 when he, as stated earlier, had applied for appointment to Foreman, 2nd grade.

The fact that the Applicant, after the mistake regarding his date of birth was discovered in 1965, produced to his Head of Department an unofficial certificate of birth, from the Tembria Village Authority (*exhibit 4*), stating that he was born in October, 1910, is something totally unconnected with the decision to

promote him, which was taken about a year earlier; it was nothing more, in my view, than a clumsy attempt on the part of the Applicant to retain, if possible, the pensionable post of Foreman, 1st grade, to which he had been promoted after he had reached retirement age.

It is common ground that a period of over a year elapsed between the promotion of the Applicant and the revocation of the decision to promote him.

I do not have, however, to consider whether, in the particular circumstances, the intervening period was such as to preclude revocation of the promotion of the Applicant; the reason being that such promotion not only was contrary to law—in the sense that it was effected when the Applicant could no longer be lawfully in service—but its invalidity was of such a nature as to *require its revocation on grounds of public interest*; it, therefore, could be revoked *at any time*, not being capable of becoming irrevocable after the lapse of a reasonable period of time after it was taken and through the creation of vested interests—(see Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p. 202; Stasinopoulos on the Law of Administrative Disputes (1964) p. 232; Kyriakopoulos on Greek Administrative Law, 4th ed., vol. II, p. 415 et seq.).

In this respect, it is useful to refer, *inter alia*, to the Decision of the Greek Council of State in case 424/1932 (vol. 1932 A, p. 1249), wherein it is stated (at p. 1251):

«Πράγματι ἔργον ἀγαθῆς διοικήσεως εἶναι νὰ μὴ μεταβάλη κατάστασιν διαρκέσασαν ἐπὶ μακρὸν χρόνον, ἔστω καὶ ἂν αὕτη δὲν παρίσταται σύννομος διότι δὲν συμβιβάζεται πρὸς τὴν ἔννοιαν τῆς εὐρυθμίας καὶ τῆς καλῆς πίστεως, αἵτινες δέον νὰ διέπωσιν τὰς πράξεις αὐτῆς, διὰ μονομεροῦς πράξεως τῆς διοικήσεως κατάργησις ἢ ἡ προσβολὴ τῶν καλῆ τῆ πίστει ἐκ τῆς καταστάσεως ταύτης προκυψάντων ἐννόμων συμφερόντων. Ἡ ἀρχὴ ὁμως αὕτη δὲν εἶναι ἐφαρμοστέα ἀπολύτως. Ἡ τήρησις τῆς προδηλῶς ἀποκλείεται ἐν ταῖς περιπτώσεσι καθ' ἃς ἐκ τῆς συνεχίσεως τῆς ἐκ παρανόμου ἐνεργείας τῆς διοικήσεως προκυψάσης πραγματικῆς καταστάσεως προσβάλλονται οὐχὶ ἀπλῶς ἀτομικὰ ἢ περιορισμένης ἐκτάσεως δίκαια, τὰ ὁποῖα οἱ ἀμέσως ἐνδιαφερόμενοι ἢ ἡ διοίκησις ἠμέλησαν ἐν καιρῷ νὰ προστατεύσωσιν ἀναγόμενα εἰς σχέσεις ἰδιωτικῆς φύσεως ἢ ὑποκειμενικὰς μόνον μεταξὺ ἰδιώτου (ὑπαλλήλου ἢ πολίτου) καὶ διοικήσεως (ὅποτε



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καὶ δημιουργεῖται ὑποχρέωσις τῆς διοικήσεως πρὸς σεβασμὸν τῶν προκυψάντων ἐνόμων συμφερόντων), ἀλλὰ ἐκτίθεται εἰς κίνδυνον αὐτὸ τοῦτο τὸ Δημόσιον συμφέρον, διότι ἐν ταῖς περιπτώσεσι ταύταις ἔργον ἀγαθῆς διοικήσεως ἐστὶ νὰ μὴν ἐπιτρέψη τὴν ἐξακολουθήσιν τῆς τοιαύτης καταστάσεως ἀντικειμένης πρὸς θεμελιώδεις τοῦ νόμου διατάξεις ἐξυπηρετούσας γενικώτερα συμφέροντα τῆς Πολιτείας».

(It is correct that it is not an act of proper administration to alter a situation which has lasted for a long time, even if such situation does not appear to be in accordance with the law; because it is not compatible with the notions of regularity and good faith, which should govern the actions of the Administration, to annul, by unilateral administrative act, or affect legitimate interests which have arisen in good faith by virtue of a situation such as aforesaid. But this principle cannot be applied absolutely. Its application is obviously excluded in those cases in which the continuance of a situation which has arisen through an illegal act of the Administration results in there being affected not merely personal or limited rights—which those directly concerned or the Administration have failed to protect in time and which concern relations of private or personal nature, as between a private person (public officer or citizen) and the Administration (in which case there arises a duty of the Administration to respect the legitimate interests which have arisen)—but in endangering the public interest as such; because in such a case it is a matter of proper administration not to allow the continuance of a situation which is contrary to fundamental provisions of law designed to serve the interests in general of the State).

The same approach—revocation on the ground of public interest—has been consistently upheld in subsequent years by the Greek Council of State; see, e.g. its Decisions in cases 230/1954 (vol. 1954 A, p. 275) and 1504/1955 (vol. 1955 C, p. 205.)

The retirement of public officers due to age is a matter of public policy prescribed by legislation in the public interest; therefore, notwithstanding the fact that the Applicant did not procure fraudulently his promotion, this is not a case where it could be said that the defective act concerned has been rendered irrevocable through lapse of time of the acquisition of vested rights; it was, thus, rightly revoked, even though more than a year had elapsed in the meantime.

Moreover, on the Applicant attaining his retirement age in November 1963 his status as a public officer came to an end by operation of law, and any act done thereafter and treating the Applicant as a public officer was in reality entirely void and incapable of creating any legal consequences. In this respect it is useful to refer to the case of *Fontbonne* decided by the French Council of State on the 3rd February, 1956 (*Recueil des Decisions du Conseil d'Etat, Collection Lebon, 1956, p. 45*). In deciding the case before it the Council of State stated the following, *inter alia*:

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“Considérant que la survenance de la limite d'âge des fonctionnaires et militaires, telle qu'elle est déterminée par les dispositions législatives et réglementaires en vigueur, entraîne de plein droit la rupture du lien de ces agents avec le service; que les décisions administratives individuelles prises en méconnaissance de la situation née de la rupture de ce lien sont entachées d'un vice tel qu'elles doivent être regardées comme nulles et non avenues et ne sauraient, en conséquence, faire naître aucun droit au profit des intéressés”.

(Considering that when the age limit of public officers and military personnel—as laid down by legislative provisions and regulations in force—supervenes, it entails automatically the rupture of the relationship of these persons with the service; and that individual administrative decisions reached in disregard of the situation created through the rupture of such relationship are vitiated by such a defect that they must be regarded as null and void and as, consequently, in no way giving rise to any right for the benefit of those concerned).

Thus, though, in essence, what Respondent 1 did decide on the 22nd December, 1965, (see *exhibit 6*) was to revoke its decision of the 1st September, 1964, regarding the promotion of the Applicant to Foreman, 1st grade (see *exhibit 5*), the expression used by it for the purpose, namely “be cancelled”, fitted the situation very aptly because what was done was to cancel something which could never have legally come into existence.

For all the foregoing reasons I find that claim (a) of the motion for relief, which is directed against the decision of Respondent 1 taken on the 22nd December, 1965 (*exhibit 6*), fails.

In relation to claim (b) of the motion for relief no decision of the Minister of Finance has been referred to or produced

before me as being the subject-matter of the recourse. What appears to have happened is that appropriate administrative action was duly taken, according to law, consequent upon the cancellation of the promotion of the Applicant to the pensionable post of Foreman, 1st grade, and his reversion, as a result, to a non-pensionable status. There was, in the circumstances, no room for any other course of action on the part of the authorities concerned and, therefore, no question of an invalid decision or of a wrongful omission on their part could arise.

In the letter *exhibit 2* it appears that the Ministry of Agriculture purported to "pension off" the Applicant. In my view such a course was a matter outside the competence of the said Ministry and it could not affect the inevitable legal consequences of the cancellation of the promotion of the Applicant to Foreman, 1st grade, which was decided by the Public Service Commission a few months later.

Accordingly claim (b) of the Applicant fails as well.

Before concluding this Judgment I would like to refer briefly to some matters which arose in the course of the proceedings:

Counsel for Applicant have drawn my attention to clause 7 of the terms of the appointment to Foreman, 2nd grade, which was offered to, and accepted by, the Applicant in 1962 (see *exhibit 12*); it was stated therein that the Applicant might be required by Government to serve after the age of fifty-five. Irrespective of whether or not such a term was a lawfully possible one in the light of the relevant status of the Applicant in the service, it is quite clear, in my view, that the promotion of the Applicant to Foreman, 1st grade, on the mistaken assumption that he was not yet fifty-five years old—but in reality after he had already attained the said age—cannot be regarded as connected in any way to clause 7 of his 1962 appointment to Foreman, 2nd grade; it cannot be regarded at all as an extension of his service under the said clause.

In this connection counsel for Applicant have argued that had this clause 7 not been inserted in the terms of his 1962 appointment, Applicant would have known that there was no prospect of his serving beyond the age of fifty-five years and might have tried earlier to secure his promotion to Foreman, 1st grade; in other words that the Applicant was misled into inactivity. Apart from the fact that the existence of the said clause 7 cannot, in my opinion, lead, in these proceedings, to the invalidity of the *sub judice* decision of Respondent 1, it is quite clear that when the Applicant applied in early 1963—

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less than a year after his appointment to Foreman, 2nd grade—for a promotion, he did not appear to be desiring, or expecting, an extension of his service, otherwise he would have, naturally, raised this matter when pointing out in his two applications in question that he was fifty-four years old already. In any case there was then still plenty of time to promote the Applicant before his attaining the age of fifty-five years, if it would have been deemed fit so to do. So I fail to see how the Applicant was in any way prejudiced by clause 7 of his 1962 appointment in relation to his promotion to Foreman, 1st grade.

It has, also, been submitted by counsel for the Applicant that the promotion of the Applicant to Foreman, 1st grade, should be considered as an extension of his service—under section 8 of the Pensions Law, Cap. 311—after his age of retirement. In the first place, Cap. 311 was not applicable to the Applicant at the material time and, moreover, in the circumstances in which the Applicant's promotion was made by Respondent 1 it cannot be deemed to be an extension of his service beyond his retirement age, because this matter was never within the contemplation of Respondent 1 at the time, especially as from the relevant recommendation (*exhibit 4*) the Applicant appeared to be still under the age of fifty-five years.

Counsel for the Applicant have referred to *Charalambides and The Republic* (1964 C.L.R. 326) in support of the submission that the promotion of the Applicant to Foreman, 1st grade, could not be revoked. It is correct that in the said case the revocation of an act favourable to the Applicant concerned was held to be invalid, but the result reached therein depended on the particular facts of such case, which, in my opinion, were essentially different from those of the present one. So it cannot be said that the *Charalambides* precedent can be of any decisive effect regarding the outcome of this Case.

In the result this recourse is dismissed. But in the special circumstances of this Case I have decided not only not to make an order of costs against Applicant, but on the contrary to take the exceptional course (see *Contopoulos and The Republic*, 1964 C.L.R. 347) of awarding to the unsuccessful Applicant an amount towards his costs, in recognition of the fact that he was put into a complex situation, and he had to take proceedings, through really no fault of his own; I, therefore, award to Applicant, and against Respondent, £10 towards costs.

*Application dismissed.*  
*Order for costs as aforesaid.*