

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS
LOIZOU
KARAYIANNIS

v.

REPUBLIC
(MINISTRY OF
EDUCATION
AND/OR
DIRECTOR OF
HIGHER
EDUCATION)

CONSTANTINOS LOIZOU KARAYIANNIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION AND/OR
THE DIRECTOR OF HIGHER EDUCATION,

Respondent.

(Case No. 431/73).

Educational Officers—Transfer from one school to another within the same town—Whether it can be made orally—Competent organ—The Minister acting through the Director-General—The Public Educational Service Law, 1969 (Law No. 10 of 1969), section 39 (2)—Transfer as aforesaid—Effected by Minister and communicated to the officer concerned orally by Head of Department—Valid transfer.

Administrative acts or decisions—Whether and to what extent additional “terms or conditions” (αἰρέσεις) may be attached thereto—Exercise of discretionary powers subject to “condition” (“ὕπὸ αἴρεσιν”)—Not allowed—Contrary to law.

Administrative acts or decisions—Defective or illegal administrative decisions—They can be revoked—Provided that no vested rights have been created preventing such revocation—Transfer in the instant case of educational officer effected contrary to law due to absence of vacant post—It can be revoked by the appropriate authority only (the Minister) and not by the Head of Department.

Transfer of educational officers—Valid transfer presupposes vacant post—Otherwise the transfer is illegal—See immediately here-above.

Educational Officers—On educational leave abroad—Permanently followed practice whereby on return they are deemed to be posted at the last held by them post—Such practice not a valid one in law, on the facts of the present case—Lazarou v. The Republic (1973) 3 C.L.R. 82, distinguished.

Transfer of educational officers from one school to another within the same town—See supra.

Revocation of administrative decisions—See supra.

*Discretionary powers—Exercise subject to “condition” (“ὕπὸ αἰθεσιν”)
—Contrary to law—See supra.*

In this recourse under Article 146 of the Constitution the applicant, as educational officer, seeks a declaration that the revocation of his transfer or emplacement as Headmaster of the Pancyprian Gymnasium, Nicosia, as well as any other subsequent administrative act, including his transfer to the Neapolis Gymnasium, Nicosia, is *null* and *void* and of no effect whatsoever.

The facts of this very unusual case are briefly as follows:—

In the school-year 1971–1972 the applicant was the head of the Neapolis Gymnasium, Nicosia. In 1972 he was granted a study leave for one year to proceed to the United Kingdom and attend the University of Reading on a scholarship granted by the Commonwealth. Having completed his studies in the U.K. as aforesaid, the applicant returned to Cyprus on August 28, 1973. On September 1, 1973, he was informed by telephone from the Head of Department (Ministry of Education) that he was transferred to the Pancyprian Gymnasium, Nicosia, as head of that school. But on September 5, 1973, the Head of Department informed the applicant orally that he was transferred from that school to the aforesaid Gymnasium of Neapolis, Nicosia.

Feeling aggrieved, the applicant filed the present recourse whereby he is challenging the so-called revocation of his transfer or emplacement to the Pancyprian Gymnasium as aforesaid. The case for the respondent may be summarised as follows:—The applicant was informed on September 1, 1973, by telephone by the Head of Department that as from September 3, 1973, he would be the Headmaster of the Pancyprian Gymnasium, Nicosia, provided that the head of that Gymnasium Mr. G. Prodromou would accept the appointment to the post of Inspector of Secondary Education Grade “A” already offered to him by the Educational Service Commission. Eventually, Mr. G. Prodromou did not accept the said offer and in view of this fact the applicant was given oral instructions on September 5, 1973, from the Head of Department to resume his duties in

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the Gymnasium of Neapolis, Nicosia, which he did. The applicant hotly disputed this version of the respondent and maintained throughout that there was never question of any "condition" attached to his said transfer to the Pancyprian Gymnasium; and that in revoking that transfer the respondent acted in abuse and excess of powers.

The learned Judge disposed of this case by dismissing the recourse for the following reasons:

It is a well settled principle of administrative law that a valid transfer presupposes the existence of a vacant post. It follows that the applicant's said transfer to the Pancyprian Gymnasium is contrary to law due to absence of vacant post in view of the fact that the then headmaster of the said Pancyprian Gymnasium, Mr. Prodromou, never vacated the post, having declined the appointment to the post of Inspector offered to him as afore-said. That being the position, it was the duty of the Minister (the appropriate authority in the matter) to annul by revocation the applicant's said illegal transfer to the Pancyprian Gymnasium. But the Minister—the only competent authority—never did revoke the said transfer (no matter whether or not the Head of Department, who has no competence at all in relation to such revocation, might have appeared to attempt so to do by giving orally instructions to the applicant on September 5, 1973, to resume his duties at the Neapolis Gymnasium (*supra*)). Consequently, this recourse, whereby the applicant claims precisely the annulment of such revocation, has to be dismissed, since the competent authority has never effected the alleged revocation.

Held, (1) (a) There is no doubt that the transfer of the applicant on September 1, 1973, to the Pancyprian Gymnasium, Nicosia, was effected by the appropriate authority *viz.* the Minister under the provisions of section 39 (2) of the Public Educational Service Law, 1969 (Law No. 10 of 1969) which give competence to the appropriate authority (*i.e.* the Minister acting through the Director-General) to transfer an educationalist from one school to another within the same town.

(b) There being no express provision to the contrary in the said section 39 (2), I take the view for the purposes of this judgment that the appropriate authority had a discretion to effect the said transfer orally.

(c) In view, however, of the allegation by the respondent that a “condition” or “additional term” (“*αἰτήσεις*”) had been added to the administrative act of the said transfer and having regard to the notion of good administration and the interest of the service, I would have thought that a written form would have been the most appropriate form of communication and not the use of the telephone system.

(2) In spite of the stand I have taken in deciding the case on a legal proposition (*infra*), I think it is necessary to place on record that the respondents have failed to discharge the onus cast upon them to satisfy this Court that the transfer of the applicant to the Pancyprian Gymnasium was made “subject to condition” (“*ὑπὸ αἰτήσεων*”) *i.e.* upon the term or condition that Mr. Prodromou, the then head of the said Gymnasium, would accept the appointment to the post of Inspector already offered to him (*supra*).

(3) But assuming for a moment that the said transfer of the applicant was actually made subject to term or condition as alleged by the respondent (but denied by the applicant), the question still remains whether in law the appropriate authority had the power to exercise its discretionary powers subject to condition (“*ὑπὸ αἰτήσεων*”) as aforesaid. Adopting respectfully the test formulated in the Conclusions from the Case-Law of the Greek Council of State 1929-1959, at p. 196 and the principle laid down in the decision of the Greek Council of State No. 1220/1959 (see *post* in the judgment), I have reached the conclusion that the administrative organ in exercising its discretion “subject to condition” (“*ὑπὸ αἰτήσεων*”) acted contrary to law *i.e.* contrary to the principles of administrative law.

(4) But the crux of the matter in this case is to be found elsewhere. A valid transfer presupposes the existence of a vacant post. (See the decision of the Greek Council of State No. 363/1930). But the post of headmaster of the Pancyprian Gymnasium was not vacant at the material time, because its holder, Mr. Prodromou, had not vacated the said post, since he declined the appointment to the post of Inspector offered to him as aforesaid. It follows that the transfer of the applicant to the post of headmaster of the Pancyprian Gymnasium on or about September 1, 1973, is contrary to law, due precisely to absence of the relevant vacant post.

(5) That being so, the appropriate authority (*i.e.* the Minister, and not the Head of Department) had not only the right but

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rather the duty to annul by revocation the said illegal transfer; and had he acted so, the applicant would have had no cause for complaint. But, there has never been such revocation by the appropriate authority (the Minister). What actually happened is that the Head of Department instructed the applicant on September 5, 1973, to return to his post at the Neapolis Gymnasium. But this does not amount to revocation for which the Head of Department has no competence whatsoever. In the result, the position is that there is no revocation to be annulled, the recourse fails and must be dismissed.

Recourse dismissed. No order as to costs.

Cases referred to:

- Nicolaou v. The Republic* (1969) 3 C.L.R. 42, at p. 52;
- Lazarou v. The Republic* (1973) 3 C.L.R. 82 at pp. 89-90;
- Papazachariou v. The Republic* (1972) 3 C.L.R. 486, at p. 497;
- Paschali v. The Republic* (1966) 3 C.L.R. 593, at pp. 608-609;
- Decisions of the Greek Council of State*: Nos. 1220/1959, 252/1931, 363/1930.

Recourse.

Recourse against the decision of the respondent revoking applicant's transfer and/or emplacement as head of the Pancyprrian Gymnasium and against any other subsequent administrative act, including his transfer to Neapolis Gymnasium.

- L. Papaphilippou*, for the applicant.
- A. Angelides*, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: In these proceedings under Article 146 of the Constitution, the applicant Mr. Constantinos Loizou Karayiannis, seeks a declaration that the revocation of his transfer and/or emplacement as the head of the Pancyprrian Gymnasium, as well as any other subsequent administrative act, including the transfer to the Neapolis Gymnasium, is *null* and *void* and of no effect whatsoever.

The facts are these:- The applicant during the school year 1971-1972, was the head of the Neapolis Gymnasium. In 1972 the applicant was granted a study leave for one year to proceed to the United Kingdom and attend the University of Reading on a scholarship granted by the Commonwealth. It appears that during the period of his studies abroad, he was informed that the post of headmaster at the Pancyprian Gymnasium became vacant, and on the 19th October, 1972, he despatched a telegram (blue 230 in the file of the Ministry) to the Minister of Education in these terms:-

“ Please consider me as the only potential candidate for the vacancy of headmaster for the Pancyprian Gymnasium. If necessary, I will return”.

Apparently, there was no reply and on the 24th November, the applicant despatched another telegram to the Minister of Education putting forward that he was awaiting a reply to his telegram in accordance with the period laid down by the law. (Blue 231).

On the 13th December, 1972, the head of the higher and secondary education department in the Ministry of Education in reply to the applicant, informed him that the matter which he had raised in his telegrams to the Minister of Education would be studied in the light of the educational needs for the current school year 1973-1974. In the meantime, before the despatch of that letter, it appears from the contents of a note (22) that the head of Department informed the Director-General of the Ministry of Education as follows:-

“ My view is that the question of emplacement of Mr. Karayiannis will be met in the light of educational needs for the current school year 1973-1974”;

and in a note (23) apparently of the same date, the Director-General wrote to the Minister of Education this note:-

“ The willingness of the applicant to interrupt his studies in order to be emplaced at the Pancyprian Gymnasium surprises me. It is unthinkable”.

Pausing here for a moment, it is to be noted that from the contents of this reply it does not appear that the post in question was or had become vacant.

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The applicant, having completed his studies and having obtained a diploma for educational administration from the University of Reading, returned to Cyprus on the 28th August, 1973, and informed the Ministry of Education accordingly. On the 1st September, 1973, the applicant was informed from the head of department by telephone that he was transferred to the Pancyprian Gymnasium as head of that school, and on the 3rd of the same month, he attended the said school and started having meetings with the deputy headmaster and also with the chairman of the school committee. On the 5th of the same month, again the head of department informed the applicant orally that he was transferred from that school to the Gymnasium of Neapolis:

There is no doubt that the applicant must have felt very uneasy and unhappy about the whole situation, and because his pride as an educationist was hurt from the sudden transfer to the Neapolis Gymnasium, he filed the present recourse on the 4th October, 1973. The application was based originally on eight grounds of law, but during the hearing of this case, counsel withdrew grounds 3 and 6 of the law. I think that counsel was rightly advised to withdraw the latter ground, particularly because in the circumstances of this case the applicant could hardly complain before this Court of a treatment in the nature of torture or inhuman treatment contrary to Article 8 of the Constitution.

On the 13th November, 1973, counsel on behalf of the respondent opposed the application, and in support of the opposition in paragraph 4, it is alleged that "the applicant was informed on the 1st September, 1973, by telephone by the head of department of higher and secondary education, that from the 3rd September, 1973, he would be the head-master of the Pancyprian Gymnasium, provided that the head of that gymnasium, Mr. G. Prodromou—to whom the Educational Service Committee had already offered appointment to the post of inspector of secondary education 'A' grade for philological subjects—would have accepted this offer. Mr. Prodromou did not accept the offer, and the applicant received oral instructions on the 5th September, 1973, from the head of the department of higher and secondary education, in view of this fact, to resume duties in the Gymnasium of Neapolis—which he actually did.

Now, going through the file of the Ministry, it appears that a note had been prepared by the head of department dated

31st October, 1973 (note 30), at the request of the Director-General of the Ministry of Education—no doubt for the purposes of preparing the defence to this recourse—narrating the facts regarding the transfer of the applicant, which were quoted verbatim by counsel in the opposition of this recourse. What is important, however, is that I was unable to trace any record of any kind which ought to have been made earlier by the head of department before the recourse was filed, regarding both the transfer of the applicant to the Pancyprian Gymnasium and again his move back to the Gymnasium of Neapolis. This practice would have been in line and is compatible with good administration, and it has been said judicially, the administration should keep written records in order to facilitate the judicial control by this Court of the administrative acts if and when an occasion arises, particularly so, when the transfer, as alleged, was made on conditions attached to the administrative act.

I would reiterate that a written record was required because of the nature of this case, and particularly because of the importance attached by the applicant to that post for his career as an educationist of so many years standing. Indeed, I would have expected a note prepared much earlier in order to avoid the misunderstanding or the cause for complaint by the applicant, which has arisen between a hierarchically superior officer and the head of a gymnasium, with no doubt, unpleasant results. I am fortified in this view going also through an extract of the minutes of the Educational Service Committee dated 5th September, 1973, which shows that although the head of the department was attending that meeting; he did not inform the said committee (as the record shows) that the applicant was already transferred or posted to the Pancyprian Gymnasium on the understanding or on condition that Mr. Prodromou would have accepted the offer made to him by the said committee for the post of Inspector. I, therefore, propose reading the said extract, under the heading:

“ Transfers of Headmasters

In view of the non-acceptance of Mr. Prodromou of the offer for appointment to the post of inspector of secondary education, and the return of Mr. K. Karayiannis from his educational leave, a surplus of one headmaster in Nicosia has been created, and as a result there arises the question of his transfer outside Nicosia. The Committee,

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after studying the whole matter and after taking into consideration all facts and documents before it, as well as the personal and confidential files of the interested parties and the views of the present head of department regarding the educational needs of the schools of Nicosia, finds that from the headmasters who are posted in Nicosia, Mr. Char. Elia must be transferred for this reason, it decides that he is transferred from the Gymnasium of Neapolis to the Agricultural Gymnasium of Morphou as from the 6th September, 1973”.

Having read that extract, and in the circumstances of this case, it seems to me that one is not left wondering or indeed speculating whether it was taken for granted that Mr. Prodromou would have accepted the post in question and that because of that reason the applicant was selected to fill the post of headmaster in the gymnasium concerned. However, I would point out that there was no evidence before me that the head of department knew before that meeting that Mr. Prodromou had not accepted the offer made to him; and this may provide the reason why he remained silent at the beginning of the meeting. Nevertheless, one can hardly resist to draw the inference from the surrounding circumstances that the appropriate authority attached no condition or terms of any kind to the administrative act of transfer.

Be that as it may, the question arises at this stage, whether the appropriate authority in effecting the transfer in question ought to have used the telephone service. There is no doubt that the transfer in question was effected under the provisions of s. 39 (2) of the Public Educational Service Law 1969 (Law 10/69) which, gives competence to the appropriate authority (*i.e.* the Minister acting through the Director-General) to transfer an educationist within the same town from one school to another. It has been said that regarding transfers both the appropriate authority and the Educational Service Committee can exercise their discretion, after taking into consideration all the facts and circumstances of each case, including the educational needs, to effect a transfer, and the Court does not lightly interfere with the exercise of that discretion. But, in view of the fact that the aforesaid section of our law does not provide the form of the administrative act, that is to say, whether a written notice or whether an oral one is needed to inform the interested person of his transfer, then for the purposes of this

judgment, I take the view that, the appropriate authority had a discretion to effect the transfer orally. In view, however, of the allegation that a condition or an additional term has been added to the administrative act of transfer, in my opinion, having regard to the notion of good administration and in the interest of the service, a written form would have been the most appropriate form of communication and not the use of the telephone system.

Reverting again to the facts of this recourse, I think that, quite rightly, counsel on behalf of the respondent conceded that the onus remains on the appropriate authority to prove in this Court that the additional terms or conditions were added by the administration to the administrative act of transfer. Then, Mr. Hjistephanou was called as a witness, and told the Court that in the morning of the 1st September, 1973, he saw the Minister of Education and spoke to him regarding his suggestions for transfers. He remembers that he also spoke to him about Mr. Karayiannis and informed him that because the Educational Service Committee offered to Mr. Prodromou the post of inspector, he suggested that once Mr. Prodromou was expected to reply by the 1st September, and *in view of the fact that he was expected to accept, he suggested to the Minister that Mr. Karayiannis would be posted to the Pancyprian Gymnasium. The Minister adopted the said proposal.* In the light of the Minister's decision, he rang up the applicant in the afternoon of the same day and told him to report on Monday to the said school to take over the headship in case Mr. Prodromou would accept the offer.

On Monday, Mr. Karayiannis attended and was present in the gymnasium, but later on in the morning he rang him up and reported to him that Mr. Prodromou had not made up his mind finally and refused to hand over to him. In the light of the new development, he invited the applicant to visit him to see what to do until the position became clear, that is to say, until Mr. Prodromou would have made up his mind. The applicant arrived at the Ministry and protested because he was considering himself to be the holder of the post in question, and particularly so, because he was treating the telegrams he sent, the reply and the directions by telephone as being of a binding nature on the Ministry of Education regarding his transfer. The applicant, the witness said, asked him to put in writing the administrative act of his transfer. He retorted to

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him that he had placed a wrong construction or interpretation to the telegrams and the reply given by the Ministry.

Regarding the question of transfer or posting, he told him that such transfer was made "ipo tin eressin" that the post in question would be vacated when Mr. Prodromou would have accepted the offer to the post of inspector. He explained that the reason he gave notice to the applicant to be present at the gymnasium was for the good functioning of that school, in case the post was vacated and he thought that such act was an expression of good will to Mr. Karayiannis, who indeed had expressed his appreciation. Finally, he said that he had considered the applicant to be the most suitable to fill the post in question when it was vacated.

On the contrary, the applicant, whom I watched during the hearing of these proceedings, was feeling hurt and annoyed from the evidence of the head of the department and strongly denied that it was made clear to him that he was transferred to the Pancyprian Gymnasium "ipo eressin". He told the Court that after he had arrived in Cyprus he visited Mr. Hjistephanou on the 30th August, 1973, and inquired about his posting at the Pancyprian Gymnasium. His reply was "You will be posted to one of the two gymnasiums, *i.e.* the Pancyprian Gymnasium or the Kykko Gymnasium, which have suffered because of the lack of good management".

On the 1st September, 1973, he telephoned from the offices of OELMEK to Mr. Hjistephanou at 11.00 a.m. for the same subject, and his reply was again "don't worry, you will find justice and you will be posted to the school you deserve to be posted to". He further added that he could not reply at that moment because there was a technical obstacle. He thanked Mr. Hjistephanou who, later on, rang him up at 1.15 p.m. at his home, and told him that on Monday the 3rd of the month which is the beginning of the school year, he would be taking over the management of the Pancyprian Gymnasium because, he added, the technical obstacle had been removed.

On the 3rd September, he arrived at the said school and saw Mr. Prodromou; and to a question put to him by Mr. Prodromou, he told him that he had instructions from the appropriate authority to take over the headship of the school. There was no question of handing over to him because Mr. Prodromou left to go to the Ministry. After he left, he had a

conference with Mr. Kakoullis regarding the school affairs and as 12.30 p.m. he visited the Minister of Education. After he was informed by Mr. Hjstephanou that he was transferred to the Gymnasium of Neapolis, he visited again the Minister and asked him to revoke the new transfer in order to remain at the Pancyprian Gymnasium. Although the Minister expressed his sympathy, adding that the Ministry should not have been revengeful because Mr. Prodromou decides one day and then he changes his mind the next day, nevertheless, nothing was done to post him to the Pancyprian Gymnasium.

Having considered very carefully all the facts and other material before me, and having observed the demeanour of these two witnesses, I have come to the conclusion that it would be to the interest of everyone concerned not to make a finding of fact based on credibility of witnesses. I have arrived at this result because I am sure that had I expressed my view regarding the credibility or the reliability of the witnesses, I would perhaps have created a bigger problem which is not called for, particularly so, because this case can be decided on a legal proposition, without warranting a finding of fact based on credibility of the witnesses on this issue.

Nevertheless, in spite of the stand I have taken earlier, I think it is necessary to place on record that the respondents have failed to discharge the onus cast upon them to satisfy the Court that the administrative act complained of was made "ipso resin". That this is so it becomes evident also from the passage I have underlined in this judgment, which forms the basis of the reasoning adopted by the Minister in effecting the transfer of the applicant to the Pancyprian Gymnasium. No doubt, the head of department in communicating to the applicant the administrative act of his transfer, had neither competence nor authority to add a term or condition to the decision already made by the Minister. I would reiterate once again that the Minister is the only competent authority to decide on the transfer of the applicant (not the head of department), and on the basis of that reasoning placed before him, it was clear that the Minister did not authorise or indeed delegate any of his powers to the Inspector-General in his Ministry, to add any condition to the administrative act of transfer (Cf. *Nicolaou v. The Republic* (1969) 3 C.L.R. 42, at p. 52).

But, assuming for a moment that the said administrative act was made on condition (a fact denied) the second question on

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this recourse is whether the administrative authority or organ had power to make the administrative act “ipo eresin”.

On this second question it is said by counsel on behalf of the applicant that the administration had no power either under the law or under Regulation (16.1) to impose additional “orismi”, that is to say “eresis”, or terms once the said transfer was made after taking into consideration the needs of the educational service. It appears that there is a divergence of opinion among the professors on this issue, but according to Stassinopoulos on the Law on Administrative Acts, 1951, at p. 150, the author accepts or takes the view that additional “orismi” can as a rule be imposed in every administrative act, with the exception only of certain categories of administrative acts which are incapable of such additional terms. The author proceeds to state at p. 152 that among those administrative acts which are incapable of “ereason”, time limits and terms, are those acts which concern or relate to the status of the governed persons. The author further proceeds to cite examples that among those cases are the cases of appointment, promotion, etc., and he concludes at p. 151 that regarding the personal position of a governed person, the stability and clarity impose that the circumstances which are created by clear declaration of the will of the administration should be free from the additions of uncertainty.

With this in mind, I now turn to the Conclusions from the Jurisprudence from the Greek Council of State, 1929–1959, and the approach of the Greek Council appears at p. 196 in these terms:—

“ Regarding the acts which are left to the discretionary power of the administration, it is possible to impose additional ‘orismi’, that is to say, ‘eresis’, time limits and terms which accord with the purpose of the law; but the administration cannot exercise its discretionary power ‘ipo eresin’, 1220/59”.

Adopting respectfully the test formulated from the Conclusions of the Jurisprudence of the Greek Council of State, I have reached the conclusion that the administrative authority or organ in exercising its discretionary power “ipo eresin” acted contrary to the law and/or the principles of administrative law, and, therefore, the contention of counsel for the applicant succeeds.

The third question is whether in the circumstances of this case the respondents were entitled to revoke the administrative act of transfer.

It is said by counsel on behalf of the applicant that the respondents acted in excess or abuse of power, because they were not entitled to revoke the administrative act once the said transfer was effected in the interest of the service itself; and that an act of revocation is within the class of cases which should be specifically reasoned.

On the contrary, it was said by counsel on behalf of the respondent that once the post in question did not become vacant automatically in accordance with the principle formulated in *Lazarou v. The Republic (Educational Service Committee)* (1973) 3 C.L.R. 82, the applicant on his return from his educational leave, was deemed under the accepted administrative practice to be posted to his previously held post at Neapolis Gymnasium; and in the alternative, he argued that the administration did not act in abuse of power in revoking the said act because it was made in the interest of the service itself.

I think that it is pertinent to state that in accordance with the Decision of the Greek Council of State 363/1930, it presupposes that before a transfer is made, there should be in existence a vacant post. In the present case, once the post of headmaster was not vacant, the transfer of the applicant was made by the respondent contrary to the Rule of law, but in accordance with the principle of administrative legality, the administration instead of running the risk of having its decision annulled by this Court, certainly it is entitled to revoke an illegal act, because according to the Greek Council of State in Decision No. 252/1931, an illegal act is liable to be annulled either by administrative measures in revoking it, or by a judicial decision before the Greek Council of State. (See Kyriakopoulos on the Greek Administrative Law, 1961, 4th edn. Vol. B at p. 412, and the Decision cited in foot-note No. 55).

Of course, the rule that defective or illegal acts can be revoked is now generally accepted in the science of administrative law; but on the understanding that no vested rights have been created preventing such revocation. That the applicant had no vested right to that post it has not been seriously disputed, but certainly; it seems to me that in the light of the evidence before the Court the appropriate authority, that is to say, the Minister,

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acting usually through the Director-General, did not exercise such right to revoke the administrative act of transfer. It is true that it was alleged by the head of the department that the applicant received oral instructions to resume duties at the Neapolis Gymnasium, but one can hardly argue that he was competent to annul the said transfer of the applicant by the administrative method of revocation, because, I repeat, the competent authority was the appropriate authority and not the head of the department. Cf. *Paschali v. The Republic* (1966) 3 C.L.R. 593 at pp. 608-609. See also Kyriakopoulos on Greek Administrative Law op. cit. Vol. 3 p. 183; Stassinopoulos on the Discourses on Administrative Law, 1964, 4th edn. pp. 231-232.

Regarding the further argument of the administrative practice, having considered the effect of *Lazarou's* case, (1973) 3 C.L.R. 82, I have reached the conclusion that that case is distinguishable on the facts of the present case. In that case, the learned trial Judge, dealing with the competence of the Educational Service Committee regarding postings and transfers of educational officers under s. 5 of the Public Educational Service Law, 1969, Law 10/69, had this to say at pp. 89-90:-

“ The exercise of these powers is a matter of administrative discretion. The permanently followed practice referred to, contains the exercise of discretionary powers in a certain way on certain matters. In effect, no new posting or transfer of an officer who returns from educational leave abroad is required as the respondent Committee in the light of its established practice considers itself as having exercised its discretion in favour of treating him as posted at the last held by him post. The exercise of this administrative practice for a long time inevitably creates certain consequences in the law of administrative acts. In the present case these consequences are that the officer is treated by the organ competent for that purpose as holding the post last held by him”.

In the present case, even if such practice is still considered as valid after the publication of the new Regulations in 1972, the applicant, no doubt, was transferred or posted to the Pancyprian Gymnasium and it is too late now for the counsel to claim that that was the practice followed by the appropriate authority, because in fairness to everyone, no such allegation was put forward in evidence before me. Cf. *Papazachariou v.*

The Republic (1972) 3 C.L.R. 486, at p. 497, particularly the proviso to section 76 (1) of Law 10/69. But once again, with respect to counsel's argument, even if such claim was before me, once the applicant was transferred to the Neapolis Gymnasium, not by the appropriate authority, then again such transfer is not a valid one in law.

For the reasons I have advanced, I am of the view that the argument of counsel on behalf of the respondent fails, that is to say, that automatically on the return of an officer from his educational leave abroad, he is deemed to have been posted to the post he was holding before, having regard to the facts of this case.

Having established, in the light of all the circumstances of this case, that no revocation was made of the transfer of the applicant by the appropriate authority, I have no alternative but to dismiss this recourse, and to express at the same time my indebtedness to both counsel for the way in which they have presented the case before me. However, in order to avoid any multiplicity of applications in the future, I think by way of observation I would state that once the appropriate authority is entitled to revoke the said administrative act at any time, and because the applicant, after he saw the Minister resumed his duties at the Neapolis Gymnasium without any reservation at all as to his rights, then perhaps the matter should be considered by him whether indirectly he waived his rights with the resumption of his duties in that school.

Application, therefore, is dismissed, but in view of the facts of this case, I have decided to award an amount of £12 costs in favour of the applicant.

*Application dismissed. Order
for costs as above.*

1974
Nov. 12

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KARAYIANNIS
REPUBLIC
(MINISTRY OF
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AND/OR
DIRECTOR OF
HIGHER
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