1980 November 24

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS MENELAOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COMMISSIONER OF INCOME TAX,

Respondent.

(Case No. 419/78).

Public Officers—Vested rights—Terms and conditions of service—Retirement benefits—Whether they can be altered to officer's disadvantage after his retirement—Public Officer holding office, immediately before the coming into operation of the Constitution, which came within the competence of a Communal Chamber—Retiring from his office and electing, by virtue of Article 192.3 *of the Constitution, to be paid pension as provided by section* 4 *of the Compensation (Entitled Officers) Law,* 1962 *(Law* 52/62)*—No income tax paid on such pension by virtue of section* 8 *of the said Law—Imposition of income tax by means of section* 2 *of the subsequently enacted Law* 19/76 *unconstitutional as offending against Article* 192.3 *of the Constitution which safeguards the officer's vested rights.*

Constitutional Law—Constitutionality of legislation—Section 2 *of the Compensation (Entitled Officers) (Amendment) Law,* 1976 *(Law* 19/76)*—Unconstitutional as offending against Article* 192.3 *of the Constitution.*

Compensation (Entitled Officers) (Amendment) Law, 1976 *(Law* 19/76)*—Section* 2 *of the Law unconstitutional as offending against Article* 192.3 *of the Constitution.*

The applicant held up to the 16th August, 1960, the day of the coming into operation of the Constitution, the permanent and pensionable post of teacher in the Paedagogic Academy

of the then Education Department. After the Independence of Cyprus, as from the 16th August, 1960, his post came under the Greek Communal Chamber and he ceased to be a civil servant by operation of Article 87(1)(b) of the Constitution. Under Article 192.3(*) he was entitled to just compensation or pension on abolition of office terms. For the purpose of promoting the application of Article 192.3 of the Constitution there was enacted the Compensation (Entitled Officers) Law, 1962 (Law 52/62); and the applicant being a civil servant to whom the provisions of Article 192.3 became applicable elected compensation by way of pension under section 4(1)(a)** of the said Law 52/62 instead of a cash payment of a lump sum under section 4(1)(b)*** of the same Law. In exercising his option applicant relied on section 8 of Law 52/62 which provided as follows:

> "All payments made under the provisions of this Law shall be exempt from income tax imposed by the Income Tax Law or any other Law in force at any time and relating to the imposition of income tax".

For the period as from his retirement till the end of 1975, the applicant was never assessed to pay any income tax on the pension he was receiving following the exercise by him of the above option. In July 1978 the respondent Commissioner relying on section 2 of Law 19/76, which repealed and replaced the above quoted section 8, decided to tax applicant's said pension; and hence this recourse.

Held, that the applicant was a civil servant who was covered under the provisions of Article 192.3 and who exercised his option to get compensation by way of a lump sum relying on the provisions of section 8 of Law 52/62 and considering that as "the more advantageous on abolition of office terms", as provided by Article 192.3 of the Constitution; that ever since he ceased to be a civil servant (see Article 122 of the Constitution

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* Article 192.3 provides as follows:

> "Where any holder of an office mentioned in paragraphs 1 and 2 of this Article is not appointed in the public service of the Republic he shall be entitled, subject to the terms and conditions of service applicable to him, to just compensation or pension on abolition of office terms out of the funds of the Republic whichever is more advantageous to him".

** Quoted at p. 604 *post*.

*** Quoted at p. 604 *post*.

and section 2 of the Public Service Law, 1967); that due to the change of his status, any regulations or any modifications in the schemes of service or retirement benefits after retirement could not be applicable to him; that Law 19/76, which amended section 8 of the previous law, was not given retrospective effect and at the time of the enactment of such law, the applicant was not "δικαιοῦχος συντάξιμος ὑπάλληλος" ("entitled pensionable officer") as appearing in sections 2, 3 and 4 of Law 52/62 but he was a retired servant "ἀφυπηρετήσας συνταξιοῦχος ὑπάλληλος" and any relationship between the Government and the applicant in respect of employment had already been ended by the retirement of the applicant prior to the enactment of Law 19/76; that, therefore, the applicant has a vested right safeguarded by the provisions of Article 192.3 of the Constitution and Law 52/62 and which, right, has been exercised by the applicant by electing what was most advantageous to him under the provisions of Article 192.3 of the Constitution and Law 52/62; accordingly the provisions of section 2 of Law 19/76 in so far as the applicant is concerned, are unconstitutional and the acts of the respondent complained of, are declared null and void and of no effect whatsoever (*Inter alia* Decisions Nos. 236/1932 and 965/35 of the Greek Council of State dinstinguished because they refer to cases where the employment of the civil servant was still existing and the relation between the civil servant and the State was continuing, in which case there was power of the State to regulate such relation by any subsequent legislation).

Sub judice decision annulled.

Per curiam:

The position might have been different, if a person had to exercise his option after the enactment of Law 19/76 and in such case he would have the opportunity, before exercising his option, to consider what would have been more advantageous to him, as provided by Article 192.3 of the Constitution.

Cases referred to:

Papaneophytou (No. 2) v. *The Republic* (1973) 3 C.L.R. 527;

Suleiman v. *The Republic* (1961) 2 R.S.C.C. 93;

Papapetrou v. *The Republic* (1968) 3 C.L.R. 502 at p. 505;

Economides v. *Republic* (1972) 3 C.L.R. 506 at p. 520;

Decision Nos. 236/1932 *and* 965/35 *of the Greek Council of State;*

Loizides and Others v. *The Republic* (1961) 1 R.S.C.C. 107;

Poyadjis v. *The Republic*, 1964 C.L.R. 467;

Frangides v. *The Republic* (1966) 3 C.L.R. 181;

Philokyprou v. *The Republic* (1966) 3 C.L.R. 327;

Piperis and The Republic (1967) 3 C.L.R. 295;

Physentzides v. *The Republic* (1967) 3 C.L.R. 505;

Papadopoulos v. *The Republic* (1968) 3 C.L.R. 662;

Ionides v. *The Republic* (1979) 3 C.L.R. 679.

Recourse.

Recourse against the decision of the Commissioner of Income Tax to assess applicant's income tax for the years 1976–1977 relying on the provisions of Law No. 19/76.

L. Papaphilippou, for the applicant.

A. Evangelou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by this recourse prays for a declaration that the act and/or decision of the respondent to assess the applicant income tax on his pension for the years 1976–1977, relying on the provisions of Law 19/76, is null and void and of no legal effect.

The relevant facts which are not in dispute, are as follows:

The applicant held up to the 16th August, 1960, the permanent pensionable post of teacher in the Paedagogic Academy of the Education Department in the service of the Government of Cyprus, which, till then, was a British Colony. After the Independence of Cyprus and as from the 16th August, 1960, his post came under the Greek Communal Chamber and the applicant ceased to be a civil servant by operation of Article 87(1)(b) of the Constitution and his status from that of a civil servant became that of a servant of the Greek Communal Chamber.

Under Article 192 of the Constitution, provision was made for remedying any injustice that might have accrued to any such holder of public office whose status was to be affected.

Under paragraph (4) of Article 192 an option is given to

holders of office in the public service whose offices came under the competence of the Communal Chamber to waive their rights under paragraph (3) of Article 192 and choose to serve under such Communal Chamber and that in such case they would be entitled to receive from the Republic any retirement benefit, pension, gratuity or other like benefit to which they would have been entitled under the law in force immediately before the date of the coming into operation of the Constitution in respect of the period of their service before such date if such period by itself or together with any period of service under such law, have entitled them to any such benefit.

Paragraph (2) of Article 192 deals with the position of Judges which is not the concern of the present case.

Paragraph (1) of Article 192 reads as follows:

"Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date".

And paragraph (3) which is the material one, provides:

"Where any holder of an office mentioned in paragraphs 1 and 2 of this Article is not appointed in the public service of the Republic he shall be entitled, subject to the terms and conditions of service applicable to him, to just compensation or pension on abolition of office terms out of the funds of the Republic whichever is more advantageous to him".

For the purpose of promoting the application of the said provision in the Constitution, Law 52/62, as subsequently amended by Law 68/62, was enacted.

The applicant being a civil servant to whom the provisions of Article 192.3 of the Constitution became applicable, elected compensation by way of pension under section 4(1)(a) of Law 52/62 instead of a cash payment of a lump sum under section 4(1)(b) of the same Law.

Section 4(1) of Law 52/62 reads as follows:

"4.–(1) Ὁ δικαιοῦχος συντάξιμος ὑπάλληλος ἐπὶ τῇ ἀφυπηρετήσει αὐτοῦ συμφώνως ταῖς διατάξεσι τοῦ ἄρθρου 3, δικαιοῦται νὰ λάβῃ, κατόπιν ἐπιλογῆς ἀσκουμένης ὑπ' αὐτοῦ ἐν τῷ τύπῳ τῷ ἐκτεθειμένῳ ἐν τῷ Πρώτῳ Παραρτήματι, καὶ ἀποστελλομένης πρὸς τὸν Ὑπουργὸν ἐντὸς περιόδου τριῶν μηνῶν ἀπὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου, εἴτε

(α) σύνταξιν βάσει τῶν περὶ συντάξεως ἐν περιπτώσει καταργήσεως θέσεως ἢ ἀξιώματος διατάξεων· εἴτε

(β) ἀποζημίωσιν ὑπὸ μορφὴν προσθέτου χορηγήματος, ἴσου πρὸς τὸ ποσὸν τῆς ἐτησίας συντάξεως εἰς ἣν θὰ ἐδικαιοῦτο τὴν 15ην Αὐγούστου, 1960, δυνάμει τοῦ περὶ Συντάξεων Νόμου ὡς οὗτος τροποποιεῖται ὑπὸ τοῦ παρόντος Νόμου, πολλαπλασιαζομένου ἐπὶ τὸν συντελεστὴν τὸν ἐκτεθειμένον ἐν τῷ Δευτέρῳ Παραρτήματι τοῦ παρόντος Νόμου, ὅστις ἀντιστοιχεῖ πρὸς τὰ συμπεπληρωμένα ἔτη τῆς ἡλικίας αὐτοῦ κατὰ τὴν 15ην Αὐγούστου 1960."

("4–(1) The entitled pensionable officer on his retirement in accordance with the provisions of section 3, may receive, upon an option exercised by him in the form appearing in the First Schedule and sent to the Minister within a period of three months from the coming into operation of this Law, either—

(a) a pension under the provisions relating to pension in case of abolition of post or office, or

(b) compensation in the form of additional grant, equal to the sum of the annual pension to which he would be entitled on the 15th August, 1960, under the Pensions Law as amended by this Law, multiplied by the multiplier appearing in the Second Schedule of this Law, which corresponds to the completed years of his age on the 15th August, 1960").

The period of three months mentioned in section 4(1) was subsequently extended to nine months by Law 68/62.

The option given under section 4(1) should, according to the above provision, be exercised within a period of nine months

on the appropriate form set out in the First Schedule of the said Law, from the day that Law 52/62 came in force. No provision is made in the said Law as to what might happen if such option was not exercised within the said period. Taking, however, into consideration the provision of section 6(1) which applies to cases of death prior to the exercise of the option to the effect that in such cases the entitled civil servant would be deemed as having exercised his option by way of compensation under paragraph 4(1)(b) one might say that in the absence of any provision to the contrary, the same would have applied in the case of a civil servant who failed to exercise his option within the time fixed by law. The importance of the time limit rests in the clear intention of the legislature to have the matter finally disposed of within the defined period of nine months.

In exercising his option applicant relied on section 8 of Law 52/62 which provided as follows:

"8. Ἅπασαι αἱ πληρωμαὶ αἱ γενόμεναι δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου ἀπαλλάττονται τοῦ φόρου εἰσοδήματος τοῦ ἐπιβαλλομένου συμφώνως τῷ περὶ Φόρου Εἰσοδήματος Νόμῳ ἢ οἱῳδήποτε ἑτέρῳ ἑκάστοτε ἐν ἰσχύϊ καὶ εἰς τὴν ἐπιβολὴν φόρου εἰσοδήματος ἀφορῶντι, νόμῳ."

("8. All payments made in accordance with the provisions of this Law are exempted from income tax imposed under the Income Tax Law or any other Law in force from time to time providing for the imposition of income tax").

For the period as from his retirement till the end of 1975, the applicant was never assessed to pay any income tax on his pension. On or about the 27th July, 1978 the Commissioner of Income Tax decided to tax applicant's pension relying on the provisions of section 2 of Law 19/76, whereby section 8 of Laws 52/62 and 68/62 was repealed and replaced by the following, as new section 8:

"8. Ἐξαιρέσει τῶν ἐπὶ ἐτησίας βάσεως πληρωμῶν συντάξεως τῶν γενομένων δυνάμει τῆς παραγράφου (α) τοῦ ἑδαφίου (1) τοῦ ἄρθρου 4 ἅπασαι αἱ πληρωμαὶ αἱ γενόμεναι δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου ἀπαλλάττονται τοῦ φόρου εἰσοδήματος τοῦ ἐπιβαλλομένου συμφώνως τῷ περὶ Φόρου Εἰσοδήματος Νόμῳ ἢ οἱῳδήποτε ἑτέρῳ ἑκάστοτε

ἐν ἰσχύϊ καὶ εἰς τὴν ἐπιβολὴν φόρου εἰσοδήματος ἀφορῶντι Νόμῳ".

("8. With the exception of the yearly payments of pensions made under para. (a) of sub-section (1) of section 4 all payments made in accordance with the provisions of this law are exempted from the income tax imposed under the Income Tax Law or any other law in force from time to time providing for the imposition of income tax").

By notice of assessment dated 27.7.1978, the applicant was assessed to pay income tax for the years 1976–1977, both in respect of his pension and in respect of all his other emoluments.

The applicant on 31.7.1978 protested to the assessment of any tax on his pension by letter sent to the Commissioner of Income Tax copy of which is attached to the application of *exh* "B".

By letter dated 25.8.1978 the Commissioner of Income Tax informed the applicant that he had decided to reject applicant's objection and that he insisted for payment of the tax so assessed.

There is no dispute as to the amount of tax payable by applicant in respect of income tax from sources other than his pension. The only dispute is in respect of tax assessed on his pension as follows:

(a)	For the year ending 31st December, 1976	£ 67.375 mils.
(b)	For the year ending 31st December, 1977	£170.840 mils.
	Total for both years,	£240.215 mils.

The legal grounds on which the recourse is based, are as follows:

(1) The application of section 2 of Law 19/76 is unconstitutional, being contrary to Article 192(3) and (4) of the Constitution.

(2) Section 2 of Law 19/76 (without prejudice to the previous point of the recourse), has no application in applicant's case but only in those cases where the right of option under section

4 of Law 52/62 is exercised after the date of the enactment of Law 19/76.

(3) The act and/or decision attacked by this recourse amounts to reduction of agreed or secured just compensation or pension payable to the applicant under Article 192(3) and (4) of the Constitution.

(4) The application of Law 19/76 amounts to violation of an agreement and/or of the principles of proper and decent administration and offends the established principle of confidence in the public administration.

(5) The exercise by the applicant of his option under section 4 of Law 52/62 established a contractual relationship with the Republic and created a legal status, placing the applicant on pension which cannot be reduced or charged by the one side only by means of legal process and in particular in view of the Revisional Appeal No. 113.

Counsel for applicant in dealing with his first point of law, contended that:

(i) Section 4 of Law 52/62 which Law was enacted under the provisions of Article 192(3) of the Constitution, gave an option to the applicant to retire by electing to be paid compensation in the way of pension than compensation in the way of a lump sum, both of which were free of income tax. By exercising such option, the applicant acquired a vested right which he has been enjoying for years and which cannot be changed or taken away from him, without his consent.

(ii) The principle of equality, as provided by Articles 6 and 28 of the Constitution is offended by section 2 of Law 19/76 in that once the right to regulate the constitutional provision of Article 192(3) was given effect by Law 52/62 and was acted upon by the applicant who elected compensation provided therein by monthly instalments free of income tax as against full compensation paid in cash free of income tax which was adopted by others in similar circumstances as the applicant. The option thus exercised by applicant has created a vested right which is now jeopardised and applicant is placed in a disadvantageous position vis-a-vis those who, under the provi-

sions of Law 52/62 elected to be paid their compensation by way of a lump sum free of income tax.

(iii) When a law gives an advantage or benefit connected with a Constitutional provision, no other law can attack this right or affect or change or amend or otherwise abolish such right. Once the Government regulated the Constitutional provision affording benefits of compensation to persons qualified under Article 192 of the Constitution it was not entitled to re-regulate such compensation, especially by depriving the applicant or other persons from their vested rights.

(iv) A Constitutional provision has overriding force over any other enactment. Law 52/62 is a law which was enacted to give effect to the Constitutional provision and in consequence, it has the same overriding legal force as that of the enabling Article 192(3) of the Constitution.

In dealing with the second ground of law, counsel argued that section 2 of Law 19/76 cannot have any application in the present case, as the Government cannot interfere with a legal option granted by legislative provision which, at the time it was granted, was considered by the applicant as the most advantageous for him and acted upon by him. Such provision can only have application in cases where the option of section 4 of Law 52/62 is exercised after the date that Law 19/76 came into operation.

The act of the respondent based on the provisions of Law 19/76 amounts to a reduction of the agreed compensation or pension payable to the applicant which was safeguarded by Article 192(3) of the Constitution. The applicant till the enactment of Law 19/76 was receiving a certain amount of compensation by way of pension. After such enactment, necessarily this compensation will have to be reduced not by way of a specific extent but by way of his fiscal capacity.

On legal ground 4 counsel argued that the exercise by the applicant of the option to be paid compensation by way of pension free of income tax contained in *exhibit* 1 and the subsequent acceptance of such option by the Government of the Republic, created a contract between the Government and the applicant. Such contract had been enforced and acted upon

for a number of years. The new law attempts to violate this contract. He went on to argue that in case the Court does not accept this contractual relationship, then it is his submission that the acceptance by the Government of the option contained in *exhibit* 1 and the subsequent payment of the compensation envisaged therein to the applicant, are facts which create such circumstances which ought to be governed by the principles of proper and decent administration and the Government, therefore, cannot violate such principles because, by doing so, the well established principle of confidence in administrative law will be at stake.

As far as legal ground 5 is concerned, counsel adopted the same arguments advanced by him on the other grounds.

Counsel for respondent argued that there is nothing which precludes the legislator to enact a law even if such law takes away something which was previously enjoyed by a citizen unless such law contravenes any constitutional provision. In the present case there is no contravention of Article 24(3) which prohibits imposition of tax with retrospective effect. Furthermore, the enactment of Law 19/76 prohibits any inequality between pensioners and all pensioners are placed on the same footing. He further submitted that under Law 19/76 the legislator purports to bring into line with the Income Tax Laws the pensions received under Law 52/62.

In dealing with the submission that the enactment of Law 19/76 contravenes the provisions of Article 192(3) of the Constitution, counsel for the respondent contended that Article 192(3) entitled applicant to just compensation or pension but it never said that this compensation should be free from income tax. It left that to the Law. So, though Law 52/62 was enacted to give effect to Article 192(3) this enabling provision never mentioned anything about tax, but it left that to the legislature. So anything provided in the legislation does not contravene Article 192(1) or (7) of the Constitution.

In concluding his argument on this point he submitted that if there is a provision in the Constitution which provides for the enactment of a law to deal with a certain case, and in this case to give compensation or pension, this does not mean that you cannot regulate the way in which the pension is to

be given in the law, if it does not contravene any specific provision of the Constitution. Therefore, the enactment of Law 19/76 does not in any way contravene Article 192 of the Constitution.

The construction of section 8 of Law 68/62, was the subject of a recourse in the case of *Papaneophytou (No. 2)* v. *The Republic* (1973) 3 C.L.R. 527 which was a case where the imposition of income tax on the applicant in that case for the years 1962–1966 was in issue.

The judgment of this Court on appeal reversing the judgment of the trial Court was to the effect that section 8 construed as a whole exempts all payments made under the law whether on cash-down basis or pension from any income tax. In delivering the judgment of the Court, Triantafyllides, P. at page 531, had this to say:

> "In our opinion section 8 is a provision which has to be applied according to its plain meaning, namely that it was intended by the legislature that all payments made under the provisions of Law 52/62 should be exempt from income tax; and, in our view, there is included within the ambit of such payments the payment of a pension which, once it has become payable under Law 52/62 is paid on the basis of provisions in the Pensions Law, Cap. 311."

And at page 533:

> "In the light of the foregoing we feel bound to decide that the pension received, by virtue of the provisions of Law 52/62, by the appellant is exempt from income tax because of the plain words of section 8 and, therefore, this appeal has to be allowed; as a result the *sub judice* decision of the respondent has to be declared to be null and void and of no effect whatsoever".

The above judgment was delivered on the 28th September, 1976. On the 14th May, 1976, Law 19/76 was enacted for the purpose of amending section 8 of the Compensation (Entitled Officers) Law (Law 52/62) by clarifying the said section and making it applicable to all other cases of payment of the compensation free of income tax, other than pension.

The scope of Article 192 and of the provisions of Law 52/62 have been the subject of judicial pronouncement in a number of cases both in the old Supreme Constitutional Court of Cyprus and the present Supreme Court in which the jurisdiction of the Supreme Constitutional Court and the Supreme Court have been vested. In *Ali Suleiman and The Republic* (*Minister of Finance and Public Service Commission*) (1961) 2 R.S.C.C. 93, Forsthoff, P. in dealing with the question of vested rights under Article 192(3) of the Constitution, had this to say at pp. 96 and 97:

> "In the opinion of the Court the rights under paragraph 3 are only vested in the holder of an office mentioned in paragraphs 1 and 2 of Article 192 in all cases where the holder of such an office is not appointed in the public service of the Republic. It follows, therefore, that in the case of the holder of an office, which comes, by operation of the Constitution, within the competence of a Communal Chamber, the rights under para. 3, which such person must waive, as provided in paragraph 4, if he chooses to serve under a Communal Chamber, only become vested in such person if he is not appointed in the public service of the Republic."

And at page 102:

> "The Court having found that the Applicant has not been lawfully and validly appointed in the public service of the Republic for the purposes of paragraph 3 of Article 192 so as to prevent the vesting in the Applicant of the rights referred to in that paragraph, is of the opinion that the Applicant is, in the absence of such an appointment, entitled, in accordance with the provisions of the said paragraph 3 of Article 192, to just compensation or pension on abolition of office terms out of the funds of the Republic whichever is more advantageous to him."

In *Papapetrou* v. *The Minister of Finance* (1968) 3 C.L.R. 502 at page 505, the following appears in the judgment of Triantafyllides J. (as he then was):

> "On the 7th July, 1962, Law 52/62 was promulgated. Such Law was undoubtedly intended to promote the application of provisions of Article 192 of the Constitution,

which safeguards the rights of persons holding offices in the public service before the date of the coming into operation of the Constitution. But Law 52/62, being an ordinary legislative enactment, could not validly amend Article 192, which is part of the Fundamental Law of the Republic. Nor can Law 52/62, be, necessarily, treated as dealing fully with all matters within the ambit of such Article; it is to be observed, for example, that the definition of 'entitled officer', in section 2 of Law 52/62, is, on the face of it, different—in wording at any rate—from the definition of what was a public officer before the 16th August, 1960, for the purposes of Article 192, as such definition is to be derived from the definition of 'public service' in paragraph 7(a) of Article 192; and, whether or not the two definitions should be treated as being the same, though differently worded, is a matter which I leave entirely open at the moment, but about which I should say that, as at present advised, I do have some doubt".

And at pages 506 and 507 the following is said:

"After carefully considering this case—on its proper, in my opinion, basis—I have reached the conclusion that the said issue of constitutionality does not have to be resolved in the present Judgment. As already stated, the Applicant had applied for compensation under Law 52/62; since Law 52/62 cannot, and should not, be treated as being exhaustive of the scope of the application of Article 192—which does not envisage a Law as being necessary for its application, I cannot see how the definition of 'entitled officer' in Law 52/62, if it falls short of the whole scope of the application of Article 192, should be held to be unconstitutional".

Counsel for applicant has addressed in length on the question of confidence of the citizen in the acts of the administration and extensive reference was made to Delikostopoulos "The Protection of Confidence in Administrative Law". In the present case, however, the respondent did not act arbitrarily but in compliance with the provisions of a Statute enacted by the Legislature and cannot be considered as having acted contrary to law or arbitrarily. The question that may arise, is whether such legislative act can have application in the case

of the applicant or whether it may be deemed as offending the rights vested in the applicant by virtue of the Constitution. Kyriacopoulos, to whom reference was made by counsel for applicant and Greek Jurisprudence have dealt with the question of vested rights as well as the question of retrospective effect of legislation on vested rights.

In Kyriacopoulos, "Greek Administrative Law", Vol. 1, 4th ed. at pp. 94 and 95 it reads:

" 'Η ἀρχὴ τῆς μὴ ἀναδρομικότητος τῶν νόμων διατυποῦται, συνήθως οὕτω: νέος τις νομικὸς κανὼν δὲν ἐπιτρέπεται νὰ προσβάλλῃ 'κεκτημένα δικαιώματα'. Τί δέον ὅμως νὰ ἐννοῶμεν ὑπὸ τὸν ὅρον 'κεκτημένα δικαιώματα' (jus quaesitum), εἶναι δύσκολον νὰ καθορισθῇ. 'Ο ὅρος 'κεκτημένα δικαιώματα' ἐδημιουργήθη ἀρχικῶς πρὸς διάκρισιν ἀπὸ τῶν 'φυσικῶν δικαιωμάτων'. 'Αλλ' ἡ περὶ αὐτῶν θεωρία ἐγκατελήφθη πρὸ πολλοῦ. 'Η δὲ σύγχρονος ἐπιστήμη δέχεται, ὅτι οὐδὲν δικαίωμα ὑφίσταται μὴ ἀπονεμηθὲν ὑπὸ τοῦ δικαίου, δέχεται δηλαδὴ ὅτι, ἐφ' ὅσον, ὑπ' αὐτὴν τὴν ἔννοιαν, ἀποκτᾶται δικαίωμά τί, πάντα τὰ δικαιώματα εἶναι κεκτημένα, ἄλλως δὲν πρόκειται περὶ δικαιωμάτων. 'Η παρεχομένη δὲ εἰς αὐτὰ προστασία ἔγκειται ἐν τῷ ὅτι ἡ ὑπὲρ τοῦ ἀτόμου ἀναγνωριζομένη νομικὴ κατάστασις δὲν ἐπιτρέπεται, ἄνευ συγκαταθέσεως αὐτοῦ, νὰ μεταβληθῇ ἐπὶ τὰ χείρω ἐκ μέρους τοῦ κράτους. Διὸ καὶ εἰς τὸ κεκτημένον δικαίωμα διαβλέπουσιν οἱ συγγραφεῖς τὴν ἔννομον ἀξίωσιν τὴν ὁποίαν ἀναμφισβήτως ἔχει ὡρισμένον πρόσωπον.

'Αλλ' ὁ κανών, ὅτι τὸ κεκτημένον δικαίωμα εἶναι ἀπρόσβλητον ἐκ μέρους τοῦ κράτους, ὑπόκειται εἰς πλείστας ἐξαιρέσεις καθ' ἃς ἐπιτρέπεται ἡ στέρησις ἢ ἄλλος τις περιορισμὸς ἰδιωτικοῦ δικαιώματος. Πρὸς τὸ κεκτημένον δικαίωμα δὲν πρέπει ὅμως νὰ ταυτίζηται ἡ ἁπλὴ προσδοκία τοῦ διοικουμένου—ὅπως λ.χ. καταλάβῃ δημοσίαν τινὰ θέσιν—καὶ δὲν προσβάλλεται κεκτημένον τι δικαίωμα ἂν οὗτος ἀδυνατῇ πλέον νὰ εἰσέλθῃ εἰς τὴν δημοσίαν ὑπηρεσίαν, λόγω τῆς ἐν τῷ μεταξὺ ἐπελθούσης τροποποιήσεως τῆς νομοθεσίας, οὕτως ὥστε, κατὰ τὸν νεώτερον νόμον, νὰ μὴ συγκεντρώνῃ τὰ ἀπαραίτητα προσόντα. Ἄλλως τε, δεδομένου ὅτι ὡς ἐλέχθη, πᾶν δικαίωμα ἀπονέμεται ὑπὸ τοῦ δικαίου καὶ, ἑπομένως, ἀποκτᾶται ὑπ' αὐτὴν τὴν ἔννοιαν, δέον ἐν ἑκάστῃ περιπτώσει νὰ ἐρευνᾶται ποῖα δικαιώματα προστατεύονται

κατὰ τῆς ἀναδρομικῆς δυνάμεως τοῦ νεωτέρου κανόνος, ἤτοι θεωροῦνται κεκτημένα".

("The rule of non-retrospectivity of laws is formulated usually as follows: a new legal canon should not offend 'vested rights'. But what should be meant by the term 'vested rights' (jus quaesitum) is difficult to be defined. The term 'vested rights' was created at first for purposes of distinction from 'natural rights'. But the theory about them has been abandoned a long time ago. Modern science accepts that no right exists which has not been granted by law, in other words it accepts that, since under this meaning a certain right is acquired, all rights are vested rights or else they are not rights. The protection given to them lies in the fact that the recognised legal position in favour of the person cannot be altered to his detriment by the State without his consent. For this reason the authors infer from the vested right the lawful claim which undoubtedly a certain person has.

But the rule that the vested right cannot be offended by the state is subject to many exemptions whereby deprivation or any other restriction of a private right is permitted. A vested right should not be identified with a mere expectation of the citizen i.e. his appointment to a public office—and a vested right is not offended if he cannot be appointed in the public service, due to the, in the meantime, amendment of the legislation, so that according to the later law he does not possess the required qualifications. Otherwise given that as stated, every right is given by the law and, therefore, acquired under this notion we must in each case enquire as to which rights are protected against the retrospective effect of the new law i.e. they are considered vested rights").

And at page 97 of same:

"Κεκτημένον δικαίωμα ἔχει ὁ ὑπάλληλος π.χ. ἐπὶ τοῦ μισθοῦ, συντάξεως αὐτοῦ, ἀλλὰ δὲν σημαίνει ὅτι ὁ νομοθέτης δὲν δύναται νὰ μειώσῃ γενικῶς τοὺς μισθοὺς τῶν δημοσίων ὑπαλλήλων ἢ νὰ καθορίσῃ ἄλλην βάσιν ὑπολογισμοῦ τῶν συντάξεων".

("An officer has a vested right e.g. on his salary, his pension

but this does not mean that the legislator cannot reduce generally the salary of public officers or fix a new basis for the calculation of pensions").

There is a number of decisions of the Greek Council of State supporting the above exposition of the law (vide Decision No. 236/1932 where it was held that the appointment in the civil service is a matter of public law, the contents of which are governed by the Laws and Regulations enacted from time to time and can be changed as they are not terms of contract. Also, Decision No. 965/35 in which it was held that, the legal relationship between the State and the civil servant is regulated by the rules of public and not private law and can be freely changed by the legislator, so long as there is no constitutional obstacle and consequently the rights and obligations of either side are not governed always by the law in force at the time of the appointment of the civil servants and independently of subsequent legislation changing that law).

I wish to adopt for the purpose of this case, what was said by Loizou A., J. in *Economides* v. *The Republic* (*Council of Ministers and Another*) (1972) 3 C.L.R. 506 at p. 520:

"It is a well settled principle of law, that administrative acts may not be given retrospective effect, except when they fall within the recognised exceptions with which we are not concerned here. It is equally true that a new law or regulation, cannot offend a vested right. Such a right is one given by law and the protection afforded to it is that the recognised legal state cannot be changed to the detriment of the person having it, without his consent; but the vested right must not be confused with a mere expectation of the citizen. (See Kyriacopoulos, Greek Administrative Law, Vol. 1, 4th Ed. p. 95). It may be said here that in my judgment there is no such vested right as a right to promotion or that the required qualification for a particular promotion post will not be changed before any promotion is effected. There is an expectation for it and nothing more".

And at page 521:

"The relationship, therefore, of State and civil servant, being a matter of public and not private law, can be regu-

lated, in the absence of constitutional safeguards by new laws, regulations and decisions effecting changes to those existing at the time of the appointment. This unlike the cases of contractual relationship falling within the ambit of private law whereby the terms of a contract may not be changed during the time that it is in force without the consent of the parties".

Such constitutional safeguards do exist under Art. 192 of the Constitution, in respect of civil servants who were holding office immediately before the date of the coming into operation of the Constitution and have been judicially pronounced in a number of cases. (Vide *Ali Suleiman and The Republic (supra) Loizides and others and The Republic* (1961) 1 R.S.C.C., 107, *Poyadjis and The Republic*, 1964 C.L.R., 467, *Frangides and The Republic* (1966) 3 C.L.R., 181, *Philokyprou and The Republic* (1966) 3 C.L.R., 327, *Piperis and The Republic* (1967) 3 C.L.R. 295, *Physentzides* v. *The Republic* (1967) 3 C.L.R., 505, *Papapetrou and The Republic* (1968) 3 C.L.R., 502, *Papadopoulos and The Republic* (1968) 3 C.L.R. 662 and *Ionides* v. *The Republic* (1979) 3 C.L.R., 679).

With the above in mind, I come now to consider the position of the applicant in this case.

The applicant was a civil servant who was covered under the provisions of Article 192(3) and who exercised his option to get compensation by way of a lump sum relying on the provisions of section 8 of Law 52/62 and considering that as "the more advantageous on abolition of office terms", as provided by Article 192(3) of the Constitution. Ever since he ceased to be a civil servant as defined in section 2 of Law 33/67 which reads as follows:

"'Δημόσιος ὑπάλληλος' σημαίνει τὸν κατέχοντα δημοσίαν θέσιν εἴτε νομίμως εἴτε προσωρινῶς εἴτε ἀναπληρωτικῶς".

("'Public officer' means the holder, whether substantive or temporary or acting, of a public office").

The definition of a "civil servant" or a "public officer" is also found in Article 122 of the Constitution, where a "public officer" is defined as "the holder whether substantive or temporary or acting of a public office" and "public office" is defined as "an office in the public service".

Due to the change of his status, any regulations or any modifications in the schemes of service or retirement benefits after retirement could not be applicable to him. Law 19/76 which amended section 8 of the previous law, was not given retrospective effect and at the time of the enactment of such law, the plaintiff was not "δικαιοῦχος συντάξιμος ὑπάλληλος" as appearing in sections 2, 3 and 4 of Law 52/62 but he was a retired servant "ἀφυπηρετήσας συνταξιοῦχος ὑπάλληλος" and any relationship between the Government and the applicant in respect of employment had already been ended by the retirement of the applicant prior to the enactment of Law 19/76.

All the authorities to which reference has already been made under the Greek Administrative Law and the Greek jurisprudence, refer to cases where the employment of the civil servant was still existing and the relation between the civil servant and the State was continuing, in which case there was power of the State to regulate such relation by any subsequent legislation. They do not refer to cases where such relation has ended by the retirement of the civil servant prior to the enactment of any subsequent legislation and especially in a case like the one under consideration where the applicant has acquired a vested right under the provisions of Law 52/62 which was enacted to promote the application of the provisions of Article 192 of the Constitution. The position might have been different, if a person had to exercise his option after the enactment of Law 19/76 and in such case he would have the opportunity, before exercising his option, to consider what would have been more advantageous to him, as provided by Article 192(3) of the Constitution.

In the result, I am of the opinion that the applicant has a vested right safeguarded by the provisions of Article 192(3) of the Constitution and Law 52/62 and which, right, has been exercised by the applicant by electing what was most advantageous to him under the provisions of Article 192(3) of the Constitution and Law 52/62. Therefore, I find the provisions of section 2 of Law 19/76 in so far as the applicant is concerned, as unconstitutional and I declare the acts of the respondent complained of, as null and void and of no effect whatsoever.

With all the circumstances of this case in mind, I make no order for costs.

Sub judice decision annulled.
No order as to costs.