

1985 December 4

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHARALAMBOS PHILIPPIDES AND SON LIMITED,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS AND/OR

1. THE MINISTRY OF EDUCATION AND/OR
2. THE DIRECTOR OF SECONDARY EDUCATION,
3. THE DIRECTOR OF TECHNICAL EDUCATION,

*Respondents.*

(Case No. 588/85).

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*Administrative act—Revocation of—Does not take the revoked act beyond the reviewing powers of the Court—The revocation does not automatically justify the annulment of the revoked act—The revocation per se does not confer a right to damages to persons prejudicially affected by the revoked act.* 5

*Damages—Article 146.6 of the Constitution—The annulment of an administrative act a prerequisite to the right of damages thereunder—If the act affects a number of persons and is the subject-matter of more than one recourse, its annulment in anyone recourse, confers a right to pursue a claim for damages to everyone of the challengers.* 10

*Recourse for annulment—Costs—They are at large and do not necessarily follow the event.*

The sub judice decision, concerning the choice of teaching material for instruction in the French language at Public Schools for the academic year 1985-1986, communicated by circular dated 6.6.1985, was revoked twenty days later by circular dated 26.6.85. 15

As counsel for the respondents explained the revocation was made by reason of defects in the decision taking process. Counsel for the respondents submitted that the revocation wholly eradicated every effect of the sub judice decision, making its dismissal inevitable. In this respect she contended that the sub judice decision could not have caused any conceivable damage to the applicants considering it was due to take effect at a future date, from the commencement of the academic year 1985-1986.

*Held*, annulling the sub judice decision (1) The revocation of an administrative decision does not take the decision, the subject matter of a recourse, beyond the reviewing powers of the Court. The annulment of an administrative act or decision is a prerequisite of the right to damages under Article 146.6 of the Constitution. The revocation *per se* does not confer a right to claim damages. The revocation of an act does not automatically justify the annulment of the act unless such annulment is justified because of breaches of the law or the principles of sound administration. For example a revocation due to change of policy of the administration does not warrant the annulment of the revoked act if such act was valid *ab initio*.

(2) The acknowledgement by counsel for the respondents that the sub judice decision was revoked because of defects in the decision making process obviates the need of further inquiry into its validity.

(3) This Court has no jurisdiction to examine the question whether the applicants suffered damage by reason of the sub judice act.

*Sub judice decision annulled.*  
*£30 towards applicants' costs.*

Cases referred to:

*Pavlidis v. The Republic* (1967) 3 C.L.R. 217;

*Yiangou v. The Republic* (1976) 3 C.L.R. 101;

*Payiatis v. The Republic* (1984) 3 C.L.R. 1239;

*Kambis v. The Republic* (1984) 1 C.L.R. 314;

*Kikas and Others v. The Republic* (1984) 3 C.L.R. 852;

*Vakis v. The Republic* (1985) 3 C.L.R. 534;

*Frangos and Others v. The Republic* (1982) 3 C.L.R. 53;

*Booksellers Association v. The Republic* (1985) 3 C.L.R. 1171.

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**Recourse.**

Recourse against the decision of the respondents to re-define or change the teaching material for instruction in the French language at public schools for the academic year 1985-1986.

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A. S. Angelides, for the applicants.

R. Vrahimi (Mrs), for the respondents.

*Cur. adv. vult.*

PIKIS J. read the following judgment. The decision challenged, concerning the choice of teaching material for instruction in the French language at public schools for the academic year 1985-86, was revoked twenty days later<sup>1</sup> because of defects in the procedure leading to the impugned decision. Counsel for the Republic submitted this deprived the recourse not only of its subject matter but abrogated the recourse in its entirety, leaving room only for its dismissal by the Court. In her contention, the revocatory decision wholly eradicated every effect of the defective decision making inevitable its dismissal. In support, she cited two cases of the Supreme Court, namely, *Byron Pavlides v. Republic (Commissioner of Income Tax and Another)*<sup>2</sup>, affirming the Administrations' duty to revoke an administrative act upon noticing facts or legal provisions invalidating it and, *Nicolas Yiangou v. Republic*<sup>3</sup> debating the implications of revocation with particular reference to the date from which it operates, whether "ex tunc" or "ex nunc". Also, reference was made to the Conclusions of the

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<sup>1</sup> (The sub judice decision was communicated by circular on 6.6.85 and recalled by circular dated 26.6.85).

<sup>2</sup> (1987) 3 C.L.R. 217, 223

<sup>3</sup> (1976) 3 C.L.R. 101.

Greek Council of State 1929-59<sup>1</sup>, where Greek caselaw on the subject of revocation is discussed. Considering the brevity of time between the decision and its revocation and the reasons for its revocation, counsel argued it operated retrospectively and had the effect of obliterating the decision in its entirety.

Counsel for the applicants disputed the correctness of the above proposition, in particular the proposition that revocation invariably operates retrospectively. However, he proceeded to submit that the time at which revocation took effect makes no difference to the case before the Court for Article 146 of the Constitution confers a right to an aggrieved party to have a defective decision annulled even where revoked, and made reference to a number of cases supporting this proposition.

We have it from the highest Authority, the Full Bench of the Supreme Court, that revocation does not take the decision, the subject matter of a recourse, beyond the reviewing powers of the Supreme Court—*Payiatis v. Republic*<sup>2</sup>. There are dicta to the same effect in *Kambis v. Republic*<sup>3</sup>. Very relevant are the observations of Savvides, J., that revocation does not deprive a party of the rights safeguarded by paragraph 6 of Article 146. In *Kambis* it was reaffirmed that annulment of administrative action is a prerequisite for the prosecution of a civil action for damages under Article 146.6.

The implications of revocation of an administrative act or decision on the fate of extant proceedings were specifically examined by this Court on two occasions—*Kikas and Others v. Republic*<sup>4</sup> and *Vakis v. Republic*<sup>5</sup>.

The principles emerging from the caselaw on the amenity to annul the subject matter of a recourse after its revocation are:-

(a) Annulment of an administrative act or decision by a

<sup>1</sup> See pages 203, 205, 275

<sup>2</sup> (1984) 3 C.L.R. 1239, 1245

<sup>3</sup> (1984) 1 C.L.R. 314, 324

<sup>4</sup> (1984) 3 C.L.R. 852

<sup>5</sup> (1985) 3 C.L.R. 534.

competent Court of law is a prerequisite to the pursuit of a civil action for damages under para. 6 of Article 146.

- (b) Where the disputed act affects a number of persons and is the subject matter of more than one recourse, its annulment in any one proceeding confers a right to pursue an action for damages under Article 146.6 to everyone of the challengers. 5
- (c) Revocation of an administrative act as such does not per se confer a right to raise an action for damages to the parties prejudicially affected by the revoked act. The challenge of the decision before a competent Court of law is essential for the validation of a party's right to damages under Article 146.6. 10
- (d) Revocation of an act as such does not automatically justify the annulment of the act. Its annulment must be warranted in law because of either breaches of the law or the principles of sound administration. For example, an act may be revoked because of a change of policy on the part of the Administration, though valid ab initio. In such a situation the revocation, though it dissipates the subject matter of the proceedings, it will not warrant its annulment. 15 20

As explained by counsel for the Republic the sub judice decision in this case was revoked because of defects in the decision-taking process; an acknowledgment that obviates the need for further inquiry into the validity of the decision. Nevertheless, counsel for the Republic invited us not to annul the decision because the revoked decision could not have caused any conceivable damage to the applicants considering it was due to take effect at a future date, from the commencement of the academic year 1985-86. Therefore, the recourse ought to be dismissed. I cannot agree. This Court will not pause to examine what damage, if any, applicant suffered from the revoked decision as it has no jurisdiction whatever to go into matter. The determination of damage, if any, is in the exclusive jurisdiction of a competent civil Court. The jurisdiction of this Court is confined to ascertaining whether the decision is liable to be annulled. If so, it is duty bound to annul it at the in- 25 30 35 40

stance of the aggrieved applicant. And so I adjudge in this case.

*Court to Mr. Angelides:* Do you claim costs?

5 *Mr. Angelides:* Yes, Your Honour, in view of the circumstances of the case.

*Mrs. Vrahimis:* No order as to costs should be made considering the practice of the Court in such cases.

10 *COURT:* Unlike civil proceedings, costs do not necessarily follow the event; they are at large. The primary object of judicial review is the scrutiny of the legality of administrative action<sup>1</sup>.

15 Guided by these principles and the facts surrounding the history of these proceedings, I adjudge, in the exercise of my discretion, the respondents to pay £30.- towards costs of applicants.

*Sub judice decision annulled.  
with £30.- towards applicants'  
costs.*

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<sup>1</sup> *Frangos and Others v. Republic* (1982) 3 C.L.R. 53, 61. And *Booksellers Association v. Republic* (1985) 3 C.L.R. 1171.