

1986 February 5

[LORIS, J.]

IN THE MATTER OF ARTICLE 140
OF THE CONSTITUTION

PANTELIS YIORGALLIDES.

Applicant.

v.

THE PUBLIC SERVICE COMMISSION
AND ANOTHER,

Respondents.

(Case No. 1040/85).

*Administrative act—Revocation of—It is an executory act—
Revocation of an illegal or irregular act—If the irregularity
or illegality is due to the action of the administration and
not to any fraudulent conduct of the person concerned,
5 then such act is not revocable after the lapse of reasonable
time—What is reasonable time depends on the circum-
stances of each case.*

Applicant's appointment to the post of Civil Engineering
Instructor with the Higher Technical Institute (H.T.I.) as
10 from 16.8.84 was attacked by two unsuccessful candidates
by Recourse 545/84. Counsel for the respondent (Public
Service Commission) in the said recourse stated to the
Court that the P.S.C. intends to re-examine the decision
15 with particular reference to the additional qualifications
envisaged by the relevant scheme of service.

As a result on the 2.12.85 the P.S.C. revoked appli-
cant's said appointment. By means of this recourse appli-
cant challenged the validity of the said revocation.

It should be noted that there is a statement of the
20 P.S.C. in its minutes of 2.12.85 to the effect that during
the examination of the subject of appointment of the appli-
cant as from 16.8.84, the Commission had failed to exa-

mine who were in possession of the additional qualification envisaged by the scheme of service.

Held, annulling the sub judice decision (1) A revocatory decision constitutes of itself an executory act.

(2) Assuming the statement of the P.S.C. in its minutes of 2.12.85 is correct, the maximum that can be said is that the appointment of applicant to the post of Civil Engineering Instructor with H.T.I. is illegal owing to a material irregularity. There is nothing to suggest that such decision was brought about by any fraudulent conduct on behalf of the applicant. 5 10

(3) Where the irregularity or illegality of an administrative act is due to the action of the administration and not to any fraudulent conduct of the person concerned, then such act is irrevocable after the lapse of a reasonable time. What is reasonable time depends on the circumstances of each case. 15

(4) In this case more than 18 months elapsed from the time of the appointment upto the time of its revocation. In the circumstances this is more than a "reasonable time". 20

*Sub judice decision annulled.
No order as to costs.*

Cases referred to:

Paschali v. The Republic (1966) 3 C.L.R. 593;

Vakis v The Republic (1985) 3 C.L.R. 534; 25

Andreou v. The Republic (1985) 3 C.L.R. 809;

Charalambides v. The Republic, 1964 C.L.R. 326.

Recourse.

Recourse against the decision of the respondents whereby applicant's appointment to the post of Civil Engineering Instructor with the Higher Technical Institute was revoked. 30

A. *Constantinou for L. Papaphilippou*, for the applicant.

R. *Gavrielides*, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

LORIS J. read the following judgment. The applicant by means of the present recourse impugns the decision of the Public Service Commission dated 2.12.85 (exh. A attached to the recourse) whereby applicant's appointment, as from
10 16.8.84, in the permanent post of Civil Engineering Instructor with the Higher Technical Institute, was revoked.

The undisputed facts of the present case are very briefly as follows:

The applicant was appointed in the permanent post of
15 Civil Engineering Instructor with the Higher Technical Institute as from 16.8.84, and served in the aforesaid post ever since.

During the period 10.9.85 - 10.12.85 the applicant was staying in the U.K. on duty under a sort of scholarship in
20 furtherance of a scheme of Educational Exchanges between the Higher Technical Institute of Cyprus and Luton College U. K.

On 10.12.85 applicant returned to Cyprus and next day when he attended the Higher Technical Institute with a
25 view to resuming his usual duties, the Director of H.T.I. handed over to him the letter dated 3.12.85 which is attached to the present recourse and marked exh. "A".

The applicant who came to know the aforesaid decision of the P.S.C. from exh. "A", obviously feeling aggrieved,
30 filed the present recourse praying for the annulment of the sub *judice* decision of the respondent P.S.C. dated 2.12.85 communicated to him as aforesaid on 11.12.85.

In order to complete the picture it must be added now, that the decision of the P.S.C. by virtue of which the applicant in the present recourse was appointed as from 16.8.84
35 in the post of Civil Engineering Instructor with H.T.I.

was attacked by two other unsuccessful candidates by means of recourse No. 545/84, which is still pending before another Judge of this Court. The file of the aforesaid recourse was produced today before me and it is marked exhibit "Z".

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It is apparent from exh. "Z", as well as from exh. "A" (the letter of 3.12.85), Appendix 2 attached to the opposition (the minutes of the meeting of the P.S.C. of 2.12.85) and Appendix 1 attached to the opposition (the letter of Senior Counsel of the Republic dated 25.11.85), that the reason which led the respondent P.S.C. to re-examine their decision impugned by recourse No. 545/84, was the statement made by the Senior Counsel of the Republic in the aforesaid recourse, to the effect that the P.S.C. is intending to re-examine the decision in the aforesaid case with particular reference to the additional qualification envisaged by the relevant scheme of service.

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Be that as it may, I must make it clear that I am not carrying out judicial scrutiny in connection with the appointment of the applicant in the aforesaid post. That is an entirely different matter which will be decided in case No. 545/84 by another Judge of this Court. My task is confined to the revocatory decision of the respondent P.S.C. of 2.12.85; as "a revocatory decision constitutes of itself an executory act liable to review at the instance of a party prejudiced thereby." (*Vakis v. The Republic*, (1985) 3 C.L.R. 534 at p. 538).

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I had the opportunity of dealing recently with the topic of revocation of administrative acts or decisions in the case of *Andreou v The Republic* (1985) 3 C.L.R. 809 at pages 819 - 823 and I shall confine myself in adopting what I have stated therein on this matter.

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Having carefully gone through the material before me, I have noted the statement of the P.S.C. contained in its minutes of 2.12.85, to the effect that during this examination of the subject of appointment of the applicant as from 16.8.84. they have failed to examine who were in possession of the additional qualification envisaged by the scheme of service. Assuming the statement in question to be correct,

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then the maximum that can be said about the aforementioned decision is that it was illegal owing to a material irregularity of the administrative act due to the action of the administration; there is nothing in this case to suggest
5 that the decision in question was brought about by any fraudulent conduct on behalf of the applicant.

In the case of *Iro Paschali v. The Republic*, (1966) 3 C.L.R. 593, the following were stated at p. 609:

10 "It is well-settled that, where the irregularity of an administrative act is due to the action of the administration, and is not due to the fraudulent conduct of the person concerned, then such act is irrevocable after the lapse of a reasonable period of time:—what is
15 reasonable period being determined in the light of the circumstances of each particular case (see Kyriakopoulos, supra, Vol. 3 p. 182; Stassinopoulos (1957), supra, p. 325). Also in Decisions 720/1930 and 439/1934 of the Greek Council of State it has been held that the revocation of even an illegal administrative act effected after the lapse of what is a reasonable
20 period of time in the circumstances of the particular case, is—unless the illegal act was made due to the fraudulent conduct of the person concerned—an invalid act itself, as contrary to the notions of proper
25 administration and to the good faith which should govern relations between the Administration and those subject to it."

In the case of *Charalambides v. The Republic*, 1964 C.L.R. 326, the Full Bench of this Court after reiterating
30 (at p. 334) the principle that "illegal administrative acts, through which a favourable situation has been created for the subject, may be revoked only if there is no lapse of a long interval of time and within a reasonable time", proceeded to hold that "... having regard to the lapse of over
35 a year between the first decision of the Council of Ministers and its subsequent revocation by a new decision, the Court is of the opinion that much more than a 'reasonable time' has elapsed in this case in the sense of the passage quoted above."

40 In the case under consideration (assuming that the

original decision was suffering from a material irregularity, and was therefore illegally reached at by the respondent P.S.C. more than 18 months have elapsed from the time the original decision was taken (vide Appendix 11 in exh. "Z") on 12.5.84 up to the time of revocation on 2.12.85. 5

In the circumstances, I hold the view that more than a "reasonable time" has elapsed in the present case, as was rightly conceded by learned counsel appearing for the Republic.

For all the above reasons the present recourse succeeds 10 and the sub judice decision is hereby declared null and void and of no legal effect whatsoever. Let there be no order as to costs.

Sub judice decision annulled.

No order as to costs. 15