

1987 February, 26

[TRIANAFYLIDIS, P. SAVVIDES, LORIS PIKIS, KOURRIS, JJ]

SAVVAS KARATSISS,

Appellant,

v

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF EDUCATION,
2. THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Revisional Jurisdiction Appeal No. 390).

Acts or decisions in the sense of Art. 146.1 of the Constitution — Justiciability of an act thereunder — The prerequisites that have to be satisfied.

Executory act — Test applicable in order to determine the question whether an act is of an executory nature

Legitimate interest — Decision to second appellant with the educational mission in U K. for a definite period — Decision to recall appellant as from the expiration of such period — In the circumstances the appellant, who had accepted the terms of his secondment, possesses a legitimate interest to challenge the validity of the decision to recall him 5

Competency — Decision taken by an incompetent organ — Ground of annulment. 10

Administrative Law — Due inquiry - Lack of — Ground of annulment.

On 10.1 80, the appellant, who is a teacher in elementary education, was seconded to the Ministry of Education on special duties On 7.8.80 he was chosen to participate in the Educational Mission in the United Kingdom until 31.8.82. This period was later extended until 31.8.83. 15

In the meantime, on 18.3 82 the Council of Ministers decided to set up a Committee of Ministers to study the problems touching the operation of the Mission in the U.K.

One of the topics which were discussed by the said Committee at its meeting of 23.4.83 was the replacement of the members of the Mission. The Committee decided to proceed with the recalling of those members of the Mission, who complete five or more years in the U.K. by September 1983 and for this purpose a questionnaire was sent to 16 members of the Mission in 20

order to ascertain whether there is no insurpassable obstacle for the application of the decision. As the applicant was not within the class of those to be recalled, the questionnaire was not sent to him

5 The result of the questionnaire was embodied in a report of the Ministry of Education, submitted to a joint Committee of representatives of the Ministries of Education and Finance in accordance with the decision of the Ministerial Committee. The joint Committee studies «the cumulative material prepared by the Ministry of Education on the basis of the answers to the questionnaire which was sent to 16 members of the Educational Mission who had completed at least five years service in the Mission.»

10 On 1 8.83 the Minister of Education forwarded a submission on the subject to the Council of Ministers. On 2.8.83 the Council decided that a new Ministerial Committee be appointed in order to study «the said suggestions» and «submit a report to the Council». Amongst «the suggestions» in the submission of the 1 8.83 was «to approve the immediate recalling of five members of the Educational Mission and their replacement by five new ones on the basis of the new terms of service.»

15 On 11.8.83 the Ministry of Education requested the Director-General of the Ministry to proceed, after consultation with the members of the Committee, with the immediate recalling of five members of the mission. The names of those to be recalled were given to the Director-General and included the name of the applicant.

20 By letter written on the same day (11.8.83) the Director-General informed the applicant of the decision to recall him

25 On 6.9.83 respondent 2 decided to transfer and post the applicant at Ipsonas village as from 10.9.83.

30 As a result the applicant filed a recourse impugning the validity of the decision to recall him (Prayer 1) and of the decision to post him at Ipsonas (Prayer 2). The recourse was dismissed on the following grounds, namely that as the secondment of applicant to the Mission was for a specified period and as the applicant consented to the terms of his such service, applicant has no legitimate interest to challenge the decision to recall him, that the decision in question could not be claimed as having been taken by an organ having no competence in the matter, that the appellant's recalling to Cyprus was arrived at after a due inquiry, that the sub judice decision was duly reasoned, and that there was nothing illegal with the decision to post applicant at Ipsonas.

35 Hence this appeal.

40 Held, allowing the appeal and annulling the sub judice decision, Triantafyllides, P. and Loris, J. dissenting: 1) Per Savvides, J. (A)(1) As from the 18th March 1982 when the Council of Ministers was seized of this matter and the decision was taken for the appointment of the first Ministerial Committee

to study the problem and report back to it the Council of Ministers became the only competent organ to decide on the structure composition and future of the Educational Mission in the U K

(2) From the material before the Court it emanates that the practice, which prevailed, was that the recalling of the members of the Mission should be effected amongst those who had completed five years of service in the Mission unless there were insurpassable obstacles for personal family or other reasons concerning such persons

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(3) In the light of the above practice the renewal of appellant's secondment in the Mission for further periods of up to five years was reasonably within appellant's contemplation

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(4) The recalling of the appellant was not made by virtue of the original arrangement of his secondment but in implementation of the decision of the Ministerial Committee to recall him There is no doubt that the decision was taken by an organ entirely different from the one, which had seconded the appellant to the Mission It follows that the sub-judice decision to recall the appellant is by itself a complete administrative act of an executory nature affecting the position and status of the appellant as a member of the U K Educational Mission Therefore the appellant had a legitimate interest to seek the review of such decision

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B (1) The terms of reference of the Ministerial Committee, which took the decision to recall the applicant was to report back to the Council of Ministers In taking the aforesaid decision the Committee acted in excess and/or abuse of its powers Furthermore such decision was a decision taken by an incompetent organ

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(2) As the decision to post the appellant at Ipsos village was consequential to his recalling from the Mission, it must, also, be annulled

II) Per Pikiis, J, Kourms, J concurring A(1) As regards the question of legitimate interest, the decision appealed from wholly overlooks that the composition of the U K Mission after 31 8 83 was the subject of a new inquiry and that the appellant was among the candidates considered for service in U K after 1 9 83

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2) The test for deciding whether an act is justiciable under Article 146, is substantive not formal To be justiciable an act must be of an administrative or executive character, issued in the domain of public law, and executory To be executory the act must be productive of legal consequences, that is, the act must emanate from and express the will of the Administration and for that reason it must be unilateral, definitive of the rights, status or position in fact or law of persons affected thereby Whether any particular person is thus affected is a mixed question of law and fact to be resolved by reference to the

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facts of the particular case. Applying this test to the decision of 11 8 83 we notice that it was issued by an administrative authority it operated in the domain of public law and had repercussions on the status and positions of the then serving members of the U K Mission

5 The appellant was one of the candidates for selection and the decision to leave him out had direct repercussions on his status and position, including financial consequences

10 B) (1) Recitation of the facts relevant to this decision, immediately discloses that the ministerial committee had no authority to decide the composition of the mission. Assumption of power by an incompetent organ constitutes an abuse of power rendering the decision taken vulnerable to be set aside. The ministerial committee had neither power in law to decide the composition of the U K mission nor was it entrusted with such a function

15 (2) In any event, the decision to recall the appellant, has to be annulled for lack of due inquiry, even if we assume that it was taken by a competent organ. The questionnaire had not been sent to the appellant and, therefore, there was no inquiry as to his personal circumstances. Further, no satisfactory reasons were given for excluding the applicant, who unlike others had less than 5 years service from the U K Mission

20 *Appeal allowed*
No order as to costs

Cases referred to

Zachanades v The Republic (1984) 3 C L R 1193

25 *Sofoclis Demetnades and Son and Another v The Republic* (1969) 3 C L R 557,

Frangos v Medical Disciplinary Board (1983) 1 C L R 256,

Costeas v The Republic (1983) 3 C L R 115,

Vorkas and Others v The Republic (1984) 3 C L R 757,

Hadjianastassiou v The Republic (1982) 3 C L R 572,

30 *Paraskeva and Another v Municipal Committee of Limassol* (1984) 3 C L R 59,

Antoniades and Others v Mincipal Council of Paphos (1985) 3 C L R 1695,

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

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 27th April, 1984 (Revisional Jurisdiction Case No. 370/83)* whereby appellant's recourse against the decision of the respondents to terminate appellant's posting in England as a member of the Cyprus Educational Mission was dismissed. 5

A. S. Angelides, for the appellant.

R. Vrahimi - Petridou (Mrs.), for the respondents.

Cur. adv. vult.

The following judgments were read: 10

TRIANTAFYLLIDES P.: In this appeal the appellant challenges the validity of a first instance judgment of a Judge of this Court by means of which there was dismissed the appellant's recourse (No. 370/83), under Article 146 of the Constitution, against the decision of the respondent Minister of Education, which was conveyed to the appellant on 11 August 1983, to terminate the posting of the appellant in England, as a member of the Cyprus Educational Mission there, and to order him to return to Cyprus, and, also, against the decision of the respondent Educational Service Commission to post the appellant, after his return to Cyprus, at Ypsonas, as from 6 September 1983. 15
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The appellant is a school-teacher and he served as a member of the Cyprus Educational Mission in England from 1980 to 1983.

The main contention of the appellant in this appeal is that the decision to recall him from England was taken by the Minister of Education at a time when he was not competent to do so as the matter was in the hands of the Council of Ministers by virtue of a decision of the Council of Ministers taken on 2 August 1983. 25

By its said decision the Council of Ministers had, in effect, decided to examine the problems relating to educational facilities made available by the Government of the Republic of Cyprus to Cypriots in London and elsewhere and a Ministerial Committee consisting of the Minister to the Presidency, the Minister of 30

* Reported in (1984) 3 C.L.R. 488.

Education and the Minister of Foreign Affairs was appointed to study various proposals that had been made and to report back to the Council. It is correct that among the said proposals, which were contained in a submission made on 1 August 1983 by the
5 Ministry of Education to the Council of Ministers, there had been included a proposal for the immediate recall of five members of the Cyprus Educational Mission in England and the replacement of them by five other educationalists under new terms of service which were to be approved also by the Council of Ministers. I do
10 not agree, however, with counsel for the appellant that by means of its said decision the Council of Ministers had assumed itself the competence of the Minister of Education to decide who would be recalled from the Mission in England to the exclusion of the exercise of such competence by the Minister of Education.

15 A meeting of the Ministerial Committee was fixed on 9 September 1983 but, in the meantime, as time was short, the Minister of Education, after consulting the members of the Committee, decided to recall to Cyprus five members of the Mission, one of whom was the appellant.

20 I am of the view that until a decision would be taken by the Council of Ministers regulating the matter in question the relevant competence remained vested in the Minister of Education and he has consulted on this occasion the members of the Ministerial Committee *ex abundanti cautela* and not because he had to share
25 his responsibility with them. I cannot, therefore, find any merit in the contention that the Minister of Education has acted without competence.

As regards the remaining grounds of appeal I think that they all relate to issues which were raised before the learned trial Judge
30 and in which I can find no real merit and, therefore, I limit myself to saying that in respect of such grounds this appeal should fail for the same reasons as those given very lucidly in his judgment by the trial Judge.

I am, therefore, of the view that this appeal should be dismissed.

35 *SAVVIDES J.*: This is an appeal against the judgment of a Judge of this court exercising revisional jurisdiction in the first instance whereby he dismissed the recourse of the appellant by which he was challenging the decision of respondent 1 communicated to

him by letter dated 11th August, 1983, terminating his participation in the United Kingdom Educational Mission and recalling him to Cyprus, and also the decision of respondent 2, consequential to the decision of respondent 1, to transfer and/or place him at Ipsonas village. 5

The learned trial Judge after he had dealt explicitly with all grounds of law raised by counsel for the appellant found that the appellant by having had accepted his secondment in England which was for a specified period and having consented to the conditions subject to which his secondment was made, according to which he was bound to return to Cyprus by the 31st August, 1983, had no legitimate interest to challenge the sub judice decision of respondent 1. He also found that the decision in question could not be claimed as having been taken by an organ having no competence in the matter, that the appellant's recalling to Cyprus was arrived at after a due inquiry and that the sub judice decision was duly reasoned. The learned trial Judge in dismissing the recourse concluded as follows: 10 15

«To any mind there was nothing illegal in the act, of recalling of the applicant and consequently his transfer to Ipsonas could not be found as being contrary to Law as claimed by him, and there is nothing offending section 38 of the Public Education Service Law, 1969 (Law No. 10 of 1969) as amended by section 7 of Law 53 of 1979. The secondment of the applicant came to an end on account of the subsequent acts that superseded same, some taken at his own request and some accepted by him as already set out in this judgment and in any event impliedly brought to an end by the respondent Commission taking the subject decision.» 20 25

The grounds raised by counsel for appellant in support of this appeal are briefly that the decision of the trial court was incorrect, in pronouncing that- 30

- (a) the sub judice decisions were valid and lawful,
- (b) the decision to recall the appellant from London was taken lawfully and by the appropriate organ, 35
- (c) there was due inquiry and proper reasoning,
- (d) that the secondment of the appellant to the United Kingdom Educational Mission was terminated lawfully and

(e) that the decision of respondent 2 was lawful.

5 As the questions posing for consideration in this appeal are not so simple as they may appear at a first glance, I find it necessary in narrating the facts to go at some length on certain matters relevant thereto.

The appellant is a teacher in the elementary education having been appointed to such post permanently on the 11th December, 1978, after he had served on contract and on probation, since 1975. On the 10th January, 1980, by decision of respondent 2 he
10 was seconded to the Ministry of Education for special duties. On the 9th July, 1980, in response to an announcement in the press about vacancies in the Educational Mission in the U.K. he applied to the Head of Elementary Education for service with the said Mission. His application was favourably considered and he was
15 chosen together with five other teachers to participate in the Educational Mission in the U.K. subject to the terms embodied in a letter dated 7th August, 1980, addressed to the appellant by the Director-General of the Ministry of Education, the contents of which read as follows:

20 «I wish to inform you that you have been chosen to participate in the Educational Mission in the U.K. This arrangement will be valid until the 31st August, 1982, and so long as it lasts you will be paid all the emoluments of your post in Cyprus and in addition the allowances which have been
25 approved for the members of the Mission (the cost of travelling from England to Cyprus will be paid by the Government of the Republic of Cyprus). Details of your duties and relevant instructions will be given through the Educational Officer in charge of the Mission.»

30 The appellant continued to serve under the same terms after the expiration of the terms of his original appointment. By letter dated the 23rd February, 1983, the Ministry of Education informed the appellant that it had been decided that his participation in the Educational Mission in England be extended for one year up to the
35 31st August, 1983 on the same terms.

In the meantime the structure, composition, financial problems and various other matters touching the operation of the Educational Mission in the U.K. were the subject of consideration not only by the Ministry of Education but also by the Council of

Ministers. From what emanates from the material in the relevant files, in March, 1982, after a submission by the Ministry of Education, the Council of Ministers at its meeting of 18.3.82 decided to set up a committee of Ministers composed of the Ministers of Education, Foreign Affairs, Interior, Finance and Presidency, to study the problems touching the operation of the Mission in the U.K. According to the minutes of the meeting of such Committee, of the 11th December, 1982, in which reference is made to the decision of the Council of Ministers to set up the Ministerial Committee, certain decisions were taken including, inter alia, the carrying out of an inquiry by the Minister of Foreign Affairs with the assistance of the Ambassador of Cyprus in London as to the possibility of setting up joint Educational Media composed of representatives of the Governments of Greece, Cyprus and of the Church to deal with problems of the Educational Mission in the U.K. Also that efforts should be made for close co-operation of the Ministries of Education of Cyprus and Greece for joint action on matters concerning the operation of such media in the U.K. for the purpose of satisfying the educational needs of the community there.

And the minutes of the meeting then go on as follows:

«The above should take place till the 15th March, 1983, so that it will become possible for the Committee of Ministers to meet and decide:

- (a) On the structure and composition of the Cyprus Educational Mission.
- (b) The criteria for the selection of the members of the Mission.
- (c) The administration and supervision of the Mission.
- (d) The progressive renewal of the members of the Mission.»

Various views were also expressed at the meeting on the financial problems of the Mission.

The Ministerial Committee met again on the 23rd April, 1983, to consider further the problem. From what appears in the minutes of such meeting, the Committee had before it the list of the teachers who were serving in the Educational Mission in London who are described in the minutes as being 24, six of whom had been

1 serving since the 20th January, 1977, 10 since 10th October,
2 1978, 4 since the 1st September, 1980 and 4 since the 1st
3 September, 1981.

4 One of the topics which was discussed at such meeting was the
5 replacement of members of the Mission. In this respect, the
6 following decision was taken:

7 «To proceed first with the recalling of those members of the
8 Mission who complete five or more years in the U.K. by
9 September, 1983. For such purpose a questionnaire should
10 be prepared and be sent to the affected members of the
11 Mission (16) to ascertain whether there is no insurpassable
12 obstacle by the application of the aforesaid decision as from
13 the new school year (1983-1984).»

14 It is obvious from the said decision that the 16 members referred
15 to in the decision are those who had been serving since the 20th
16 January, 1977 and 10th October, 1978 and who by September,
17 1983, would have completed five years service in the U.K.

18 In furtherance of such decision, a questionnaire was sent to the
19 said 16 teachers as to their personal and family problems. Such
20 questionnaire was not sent to the appellant and seven other
21 teachers who had been seconded after the 1st September, 1980,
22 as they had not completed five years service abroad. The
23 cumulative results of the questionnaire were embodied in a report
24 prepared by the Ministry of Education which was submitted to a
25 joint Committee of representatives of the Ministries of Education
26 and Finance in accordance with the decision of the Ministerial
27 Committee. The joint committee met on the 8th June, 1983 and
28 arrived at certain conclusions which it decided to submit to the
29 Ministerial Committee. It further decided to request the Minister
30 of Education to hold a meeting of the Ministerial Committee the
31 soonest possible. It is worthwhile to note from the minutes of the
32 meeting of such joint committee that it studied, amongst others,
33 «the cumulative material prepared by the Ministry of Education on
34 the basis of the answers to the questionnaire which was sent to 16
35 members of the Educational Mission *who had completed at least
36 five years service in the Mission.*»

37 From the relevant file of the Ministry of Education which is
38 before us, it appears that a meeting of the Ministerial Committee
39 was summoned by the Minister of Education for the 24th June,

1983, which, however, did not take place due to the inability of certain Ministers to attend and the meeting was adjourned to the 1st July, 1983 and then again to the 13th July, 1983. Nothing appears in the record that any meeting took place for further discussion on the matter. The Minister of Education on the 1st August, 1983, presumably bearing in mind the various decisions of the Ministerial Committee and the suggestions of the joint committee made a submission to the Council of Ministers on the subject which was placed before the Council of Ministers at its meeting of the 2nd August, 1983. At such meeting, according to the minutes:

«The Minister of Education informed the Council of Ministers on the various proposals of his Ministry concerning the effective solution of the problem to render facilities to the Cypriot communities in London and elsewhere. Particulars of the proposals are contained in the submission of the Ministry of Education, copy of which is attached to the minutes.

It has been agreed that a Committee be appointed consisting of the Minister of Education, Presidency and Foreign Affairs in order to study the said suggestions and submit a report to the Council.»

Amongst the suggestions contained in the submission of the Minister of Education to which reference is made in the minutes, were under para. 5 «the new terms of service» of the members of the Mission and under paragraph 6(c) «to approve the immediate recalling of five members of the Educational Mission and their replacement by five new ones on the basis of the new terms of service.»

According to a note (note 27) in the relevant file the secretary of the Council of Ministers addressed a request to the Director-General of the Ministry of Education that the Ministerial Committee should be summoned and submit its report to the Council of Ministers for the taking of a final decision on the matter. The Director-General of the Ministry of Education conveyed the request to the Minister of Education on 11.8.1983, who by a note to the Director-General (note 29) of the same date directed him as follows:

«D.G.

5 As there is no time for holding meetings of the Ministerial Committee, after consultation with the members of such Committee please proceed to recall five members as we agreed, having taken into consideration their years of service in the Mission, the difficulties they face for returning to Cyprus and the inefficiency (in one case). The five members who shall be recalled are:

10 (a list of the names then follows which includes that of the appellant).

At the end of the above note there are the following records:

«We should summon the Committee the soonest possible.

Signature
2.8.83»

15 «Note. After consultation with the Minister of Education and due to the absence of the Ministers the Ministerial Committee will be summoned in the week commencing 22.8.83.

Signature
13.8.83.»

20 In the relevant file there is a summons dated 23rd August, 1983, convening a meeting of the Ministerial Committee on which there is a record dated 10.9.83, to the effect that the meeting did not take place and it was postponed. In fact, there is no record as to the holding of any meeting of the Ministerial Committee thereafter, or
25 that such Committee did ever submit a report to the Council of Ministers.

30 What, however, happened, was that the Director-General of the Ministry, in compliance with the directions of the Minister of Education of the 11th August, 1983 wrote to the appellant on the same day, informing him as follows:

«I have been instructed to refer to your participation in the Educational Mission in the U.K. and wish to inform you that it has been decided that your participation be terminated on the 31st August, 1983.

35 In consequence thereof, as from 1.9.1983 you should return to the duties of your post in Cyprus.»

Upon receipt of such letter the appellant protested in writing to the Director of Elementary Education complaining for unfair and

unequal treatment and asking for the reasons of his recall, to which the Director of Elementary Education replied on 30th September, 1983 giving the following reasons

«

(a) The arrangement was subject to revision from year to year and it is within the exclusive competence of the Ministry of Education to extend or terminate it 5

(b) It was made clear to you by our letter P 4695 dated 7 8 1980 as well as by our letter of 23 2 1983 that the arrangement was for one year's duration. In your case the arrangement began on 1 9 1981 expired on 31 8 1982 and was renewed for the period 1 9 1982 till 31 8 1983. Both on the first occasion and on the second occasion you have accepted without any reservation. We regret that the reservations which you now raise are out of place and time and cannot be considered » 10 15

The decision of respondent 1 which was communicated to the appellant by letter dated 11th August, 1983, was challenged by the appellant by his recourse under prayer 1

On 6th September 1983 respondent 2 decided to transfer and post the appellant at Ipsonas village as from 10 9 83. Such transfer was challenged under prayer 2 of the recourse 20

What emanates from the material before us, the functioning and the composition of the U K Educational Mission, and matters pertaining to the rendering of assistance to the various Cypriot communities in the U K, became the subject of a new inquiry by the Council of Ministers after a submission had been made by the Minister of Education, very rightly in my view, under the provisions of section 6(2)(b) and (e) of Law 12/65. As from the 18th March, 1982 when the Council of Ministers was seized of this matter and the decision was taken for the appointment of the first Ministerial Committee to study the problem and report back to it, the Council of Ministers became the solely competent organ to decide on the structure, composition and future of the Educational Mission in the U K 25 30

On the question of recalling of some of the members of the Mission, it is quite clear that all along from the time the first Ministerial Committee was appointed, as it emanates from the minutes of the meetings of such Committee and the steps taken for

the implementation of its decisions, and well before, the practice that prevailed was that there should be a progressive renewal of the members of the Mission and that concerning the recalling of members, such recalling should be effected amongst those who
5 had completed five years service in the Mission unless there were insurpassable obstacles for personal, family or other reasons of such persons. It is in furtherance of this decision that the questionnaire was sent to only 16 members of the Mission, that is, those who had completed five years participation in the Mission.

10 With the above facts in mind, I come now to consider the question as to whether the appellant was vested with a legitimate interest to challenge the sub judice decision concerning his recalling from the Mission. Counsel for the respondents in his
15 address in support of the sub judice decision and the first instance judgment, contended that the terms of service of the appellant were well known to him and in fact formed part of the arrangement for his secondment to the Mission; that appellant by having had accepted such terms unconditionally and unreservedly deprived himself of any right to challenge such arrangement at a later stage.

20 It is correct that the original term of the arrangement for the secondment of the appellant was for a period of two years ending on 31.8.82. Nevertheless, renewal of his secondment for further periods up to five years was reasonably within his contemplation, in view of the existing practice, as it appears from the file of the
25 Ministry of Education in which the terms of service of members of the Mission appear, to have such service prolonged for up to five years unless the needs of the service otherwise required. It was in fact as a result of such existing practice that after the expiration of the original term, appellant's secondment was prolonged for a
30 further year expiring on 31.8.1983. In the meantime and before even the expiration of the first term of his secondment, as already mentioned, the Council of Ministers became seized of the matter of the composition of the Mission and initiated an inquiry into the matter.

35 The termination of the participation of the appellant in the U.K. Mission and his recalling to Cyprus was not based on a decision taken by virtue of the arrangement for his secondment but in implementation, according to the record of the Minister of Education, of the decision of the Ministerial Committee which had

been appointed by the Council of Ministers. There is no doubt, in my mind, that such decision was a decision taken by an organ entirely different from that which seconded the appellant to the Mission in London and therefore it is by itself a complete administrative act of an executory nature affecting the position and status of the appellant as a member of the U.K. Educational Mission and as such could be challenged by a recourse under Article 146 of the Constitution. Therefore, the appellant had a legitimate interest to seek the review of such decision with a view of testing its validity.

Having found that the appellant had a legitimate interest to challenge the sub judice decision, I shall proceed to examine the validity of such decision.

The terms of reference of the Ministerial Committee by the decision of which the termination of the participation of the appellant was effected, were to consider the matters pertaining to the structure and composition of the U.K. Educational Mission and the recalling of its members, and *to report back to the Council of Ministers*. It had no power to implement by itself any decision taken by it. By implementing such decision the Ministerial Committee had exceeded the authority entrusted to it by the Council of Ministers and thus acted in excess and/or abuse of powers. Furthermore, in accordance with the terms of reference of such Committee the decision taken by it to terminate the participation of the appellant in the U.K. Educational Mission and recall him to Cyprus was a decision taken by an incompetent organ. (As to the effect of decisions taken by incompetent organs useful reference may be made to the case of *Zachariades v. Republic* (1984) 3 C.L.R. 1193).

For the above reasons the sub judice decision for the termination of appellant's secondment in the U.K. Mission and recalling him to Cyprus should have been annulled.

In view of my above conclusion, the decision of respondent 2 for posting the appellant at Ipsonas village which was consequential to the termination of his participation in the U.K. Educational Mission and his recalling to Cyprus, should also have been annulled.

In the result the appeal succeeds and the sub judge decisions challenged by appellant's recourse, are hereby annulled.

There will be no order for costs.

5 *LORIS J.:* I had the opportunity of reading in advance the judgment delivered by the learned President of the Court and I am in full agreement with him.

10 *PIKIS J.:* The two motions for which relief was sought, entailing judicial review of a decision of the educational Authorities to recall the appellant to Cyprus from the United Kingdom educational mission and, the decision incidental thereto to reassign him teaching duties in Cyprus, were dismissed for lack of legitimate interest. Under review on appeal, is the correctness of the above
15 judicial decision and, if wrong, the propriety of the relevant decisions of the educational Authorities. The learned trial Judge took the view that appellant was bound by the terms and conditions of his attachment to the U.K. mission to return to Cyprus by 31st August, 1983; in consequence, no legitimate interest of his was prejudicially affected or could be prejudicially affected by any decision requiring him to return to Cyprus.
20 Moreover, the reassignment of duties to him in the Educational Service was nothing other than a reaffirmation of his duty to serve as a teacher after the implicit termination of his secondment to the Ministry of Education for special duties. The foremost issue in this appeal, the one that attracted most argument, is the first issue
25 turning primarily on the legal implications of the decision of the ministerial committee to recall him to Cyprus for educational duties after 31.8.83. For proper appreciation of the legal nature, character and implications of this decision, we must narrate the facts, albeit briefly, preceding and surrounding it.

30 In January, 1980, the Educational Service Commission seconded the appellant to the Ministry of Education for the discharge of «special duties». Responding to an advertisement of the educational Authorities, the appellant successfully applied for service to the U.K. educational mission of Cyprus. By a decision of
35 the appropriate Authority, dated 7.8.80, he was appointed to the United Kingdom Educational Mission for an initial period of two years; extended for one more year, a fact formally communicated to him on 23.2.83. His service in the U.K. was due to come to an end on 31.8.83.

Meantime, the Ministry of Education initiated an inquiry into the structure of the U K mission with a view to - (a) institutionalising cultural and educational assistance to the U K Cypriot community and, (b) minimising the cost to government. The results of this inquiry and suggestions for changes, were the subject of a submission to the Council of Ministers on 1 8 83. It was proposed inter alia, to reduce the force of the mission by recalling five of its members and altering the terms of service of the remaining members. Also, suggestions were made for the restructure of the mission by entrusting responsibility to an independent institution, a foundation, that would be able to attract funds from non governmental sources as well.

The Council of Ministers discussed the submission on 2 8 83 and referred it to a ministerial sub-committee for further consideration with a view to reporting back to the Council of Ministers on its merits and measures necessary for its promotion. Soon afterwards on 8 8 83 the Secretary to the Council requested the ministerial committee to convene the earliest and report back to the Council of Ministers without delay. The ministerial committee did neither. They neither met nor reported back to the Council of Ministers. Instead, they took it upon themselves to adopt measures for the implementation of some aspects of the submission of the Ministry of Education to the Council of Ministers, specifically to recall five of the members of the U K mission, including the appellant. On the day consensus was reached among the ministerial committee on the above, a letter was despatched to the appellant informing him of the decision to recall him. Earlier, it must be noted the Ministry of Education had addressed a questionnaire to members of the mission with five or more years service in the United Kingdom, in order to elicit their personal circumstances preliminary to deciding which of them would be recalled. It appears the Ministry was originally inclined to confine the inquiry on who should be recalled among those members of the mission who were in the U K for five or more years. As appellant had less than five years service, his circumstances were not probed nor was he given an opportunity to put forward his views on the matter.

The review of the validity of the above decision was the subject matter of the recourse before the trial Court, as well as the decision following thereto to revoke his secondment to the Ministry of Education and assign him teaching duties in elementary

- education. The learned trial Judge dismissed both motions as ill founded. The decision to recall him, in particular, was found to be non justiciable for lack of a legitimate interest. In the opinion of the learned trial Judge appellant had no right to remain in the United Kingdom, except in accordance with and subject to the terms of his appointment. As they required him to return to Cyprus by 31.8.83 he had no locus standi or interest in any decision deciding the composition of the U.K. mission thereafter. The decision wholly overlooks that the composition of the U.K. mission after 31.8.83 was the subject of a fresh administrative inquiry and that appellant was among the candidates considered for service in the U.K. after 1.9.83. On the face of it the decision to recall the appellant was unconnected with the terms of his previous assignment and their implementation.
- 15 Counsel for the appellant argued appellant had a direct interest in the decision taken, because he was a member of the U.K. mission, and a candidate for service in the U.K. after 31.8.83. As the decision had direct repercussions on his position and status, and affected him financially as well, he had a legitimate interest to seek the review of the decision to recall him with a view to testing its validity. On the merits of his complaint he submitted the decision to recall him could not stand the test of any scrutiny as it was the result of abuse and excess of power on the part of the ministerial committee who decided to recall him.
- 25 Counsel for the respondent, on the other hand, supported the decision of the trial Court as valid, and argued that appellant had no interest to question it as he had no right to remain in the United Kingdom after 31.8.83. Alternatively, the decision of the ministerial sub-committee of 11.8.83, if reviewable, constituted a valid exercise of the discretionary powers of the committee. The appeal turns primarily on the juristic nature and implications of the decision of 11.8.83; in particular, whether it was executory and, secondly, prejudicial to any legitimate interest of the appellant. The test for deciding whether an act is justiciable under Article 146, is substantive not formal*. To be justiciable an act must be of an administrative or executive character, issued in the domain of public law and, executory. To be executory the act must be productive of legal consequences, that is, the act must emanate

* See, *inter alia*, *Sofocles Demetriades and Son and Another v. Republic* (1969) 3 C.L.R. 557; and *Frangos v. Medical Disciplinary Board* (1983) 1 C.L.R. 256.

from and express the will of the Administration and for that reason it must be unilateral, definitive of the rights, status or position in fact or law of persons affected thereby. Whether any particular person is thus affected, is a mixed question of law and fact to be resolved by reference to the facts of the particular case*. Applying this test to the decision of 11.8.83, we notice that- 5

(a) it was issued by an administrative authority,

(b) it operated in the domain of public law inasmuch as it purported to determine the composition of a body charged with an important mission in whose success the public had a vital interest and, 10

(c) it had repercussions on the status and position of the then serving members in the U.K. mission.

The inquiry was confined to deciding which members of the U.K. mission should continue serving in the U.K. as from 1.9.83. Appellant was one of the candidates for selection and for that reason the decision had direct repercussions on his status and position, including financial consequences. The decision to leave him out affected him directly and for that reason he could seek the review of its legality. The decision was definitive of his position in the public service as from 1.9.83. For that reason, I am unable to uphold the decision of the trial Court that he had no legitimate interest to pursue the present proceedings. It becomes, therefore, necessary to examine the merits of the recourse, that is, the validity of the decision of the ministerial committee of 11.8.83. 20 25

The recitation of the facts relevant to this decision, made earlier, immediately discloses that the ministerial committee had no authority to decide the composition of the U.K. mission. Its terms of reference were specifically confined to study of the submission of the Ministry of Education of 1.8.83 with a view to reporting to the Council of Ministers on its soundness and measures necessary for its implementation. Assumption of power by an incompetent organ constitutes an abuse of power, rendering the decision taken vulnerable to be set aside**. The ministerial committee had neither power in law to decide the composition of the U.K. mission, nor was it entrusted with such a function. 30 35

* See, *inter alia*, *Costea v. Republic* (1983) 3 C.L.R. 115; *Vorkas and Others v. Republic* (1984) 3 C.L.R. 757.

** See, *inter alia*, *Hadjianastassiou v. Republic* (1982) 3 C.L.R. 572; *Paraskeva and Another v. Municipal Committee of Limassol* (1984) 3 C.L.R. 54; *Antoniades and Others v. Municipal Council of Paphos* (1985) 3 C.L.R. 1695; and *Payiatis v. Republic* (1984) 3 C.L.R. 1239.

Even if we supposed that they were vested with authority to take the sub judge decision, it would again have to be annulled for lack of due inquiry. Contrary to their professed aim to elicit the personal circumstances of the members of the U.K. mission they
5 omitted to make such inquiry in the case of appellant. Further, no satisfactory reasons are given for excluding the appellant from the U.K. mission who, unlike others, had less than five years service in the U.K. In view of our conclusion to allow the appeal and set
10 aside the decision of 11.8.83, it becomes unnecessary to examine the second prayer of the appellant for improper reassignment to him of elementary school duties.

For all the above reasons, the appeal is allowed and the sub judge decision is annulled. Let there be no order as to costs.

15 *KOURRIS, J.:* I had opportunity to read in advance the Judgment of Pikis. J. and I agree with his reasons and conclusions and I would allow the appeal.

Appeal allowed by majority. No order as to costs.