1988 November 2

[BOYADJIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

LEONIDAS LEONIDOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF COMMERCE & INDUSTRY,
2. THE CO-OPERATIVE DEVELOPMENT DEPT.,
3. THE REGISTRAR OF CO-OPERATIVE DEVELOPMENT,

Respondents.

(Case No. 628/84).

Public Officers—Salary—Increments—Educational leave without pay—Placing applicant, upon his return to work, at the same point in the scale at which he was, when he left for his studies—Request that he be placed at a point he would have reached, if he had not obtained such leave, turned down on ground of policy based on the fact that he had not completed his studies—Complaint that such reflection was without legal justification—Had the applicant been on scholarship, his case would have been governed by Circular 266 of 7.2.1972, para. (C) (iii)—Applicant's case falls within Circular 542 of 15.7.1980, Regs. 1 and 2—Therefore, the policy invoked had a legal basis—Reason for the non-completion of the studies (e.g. unreasonable refusal of administration to grant extension of the leave) irrelevant.

Presumption of regularity—Omnia presumuntur rite esse act—Burden of proving lack of correct ascertainment of facts rests on applicant's shoulders.

Misconception of fact—Burden of proof—Lies on applicant.

Reasoning of an administrative act—Principles applicable—Short analysis of.

Reasoning of an administrative act—Even if the act cannot be sustained by the legal reason that was in fact invoked, such act will be upheld, if it is valid in law for some other reason—Failure to mention the specific provision that could in fact justify the act—As such provision left no discretion to the administration to do otherwise, the sub judice act will be upheld.

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Public Officers—Salary—Increments—Educational leave without pay—Refusal to extend period of leave—Failure to challenge such refusal by a recourse to this Court—Refusal to place applicant at a point in the scale, which he would have reached, had he not obtained the leave—Submission that the principles of good administration required that the Administration should have taken into account the fact that the refusal to extend the period of leave was unreasonable—Rejected.

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The facts of this case appear sufficiently from the judgment of the Court.

Recourse dismissed.
No order as to costs.

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Cases referred to:

Lordos and Others v. The Republic (1974) 3 C.L.R. 447;

The Republic v. Ekkeshis (1975) 3 C.L.R. 548;

Korai v. The Cyprus Broadcasting Corporation (1973) 3 C.L.R. 546;

20 *Georghiades v. The Republic* (1967) 3 C.L.R. 653;

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

Pikis v. The Republic (1967) 3 C.L.R. 562;

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

Spyrou v. The Republic (1973) 3 C.L.R. 478.

Recourse.

Recourse against the refusal of the respondents to place applicant at the point of his salary scale to which he would have reached if the educational leave had not been granted to him.

Ph. Valiantis, for the applicant. 5

St. Ioannidou (Mrs.), for the respondents.

Cur. adv. vult.

BOYADJIS J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act or decision of the respondents communicated to the applicant by 10 their letter dated 15th September 1984, whereby they refused to place the applicant at the point of his salary scale to which he would have reached if the educational leave had not been granted to him, is null and void and of no legal effect whatsoever.

The factual background to the present recourse is briefly as 15 follows:

On 29 December 1979, acceding to a request made by the applicant, the respondents granted to him educational leave without pay originally for one year ending on 28 December 1980 for the purpose of enabling him to proceed to West Germany and study 20 economics at the university of Bonn, on condition that he signs the prescribed written agreement on Form Gen. 108, which he did. It was thereby, inter alia, provided that, if at any time during the course of study it appears to the Government that any report or reports regarding the student's conduct, industry or progress is 25 or are in any way unsatisfactory, it shall be lawful for the Government to determine the aforesaid agreement for all intents and purposes. The applicant was then holding the post of Assistant Co-operative Officer. As a result of the subsequent reoraginsation of his Department as from 1 January 1981, his post 30 was renamed "Co-operative Officer 2nd Grade". The salary scale

of this post, which the applicant holds until today, is A.7.

Pursuant to the above, the applicant proceeded to West Germany and commenced his studies. On 9 October 1980, the applicant addressed a letter to the respondents requesting extension of his educational leave without pay for a further period of two years "for the completion of his studies and the obtaining on his degree". The respondents examined applicant's request and, having evidently satisfied themselves of his satisfactory progress during the first year of his studies, they wrote to him a letter dated 31 December 1980, whereby they informed him that, on condition that he signs a similar contract in terms of Form Gen. 108, which the applicant did, his educational leave without pay would be extended for only one more year ending on 29 December 1981. It was stated in the same letter that any further extension of his educational leave shall depend on the academic progress of the applicant.

On 8 December 1981, the educational leave of the applicant was likewise extended for one more year, being the third year, at the expiry of which the two years' period mentioned in applicant's letter dated 9 October 1980, had been completed.

On 2 December 1982, the applicant wrote another letter to the respondents whereby he was praying for a further extension of his educational leave of absence without pay without defining this time the extent thereof. In answer to the applicant's last aforementioned application respondent No. 3 addressed to him a letter dated 27 May 1983, reminding him that his leave of absence, having been renewed for a further period of two years, had expired on 29 December 1982, and informing him that they have reluctantly recommended the grant of leave of absence for one more year ending on 29 December 1983. In the same letter it was stated that, though the Government appears willing to renew his leave of absence until 29 December 1983, there are serious difficulties for any further renewal thereof beyond 29 December 1983, when a total period of four years' leave of absence would be granted to him. In conclusion the applicant was being asked to inform the

respondents whether, in view of the above, he proposed to return to his work and to resume his duties from 30 December 1983 onwards. In reply, the applicant informed the respondents by his letter dated 6 June 1983, that, being a civil servant, he had no intention to cause any difficulties to his Department or to disobey their directions and that he, therefore, proposed to return to his work and resume his duties on 30 December 1983. In fact the applicant returned to Cyprus and resumed his duties on 1 November 1983.

It is pertinent to remark at this stage that, on receiving the respondents' aforesaid letter dated 27 May 1983, the applicant did not pursue further and did not insist on his application dated 2 December 1982, either by defining the period of the additional leave of absence which he was praying for, or by protesting to or answering the innuendo contained in the respondents' last letter to him dated 27 May 1983, that his progress was not satisfactory since he needed much longer period than the period of two years stated in his letter dated 9 October 1980, to complete his studies and get his diploma. Instead, it seems that he treated, wrongly in my opinion, the respondents' letter dated 27 May 1983 as a definite and final refusal of the respondents to grant to him any leave of absence after 29 December 1983. It should be added at this juncture that, subsequently to his letter dated 2 December 1982, and prior to the respondents' letter dated 27 May 1983, the applicant had submitted to the respondents a certificate issued on 30 January 1983, by the university of Bonn to the effect that

(i) he was studying in the university uninterruptedly since his registration in October 1980;

(ii) he had fulfilled the requirements for his participation in the intermediate examinations;

(iii) though the minimum period of studies in the field of National Economy in the university is, according to the Regulations, eight half-yearly terms, for the successful completion of the studies an average student needs twelve half-

yearly terms; therefore, the applicant is not expected to complete his studies before 1986.

On 21 February 1984, the applicant addressed a letter to the Acting Director of Public Administration and Personnel through Respondent No. 3, stating that he was orally informed that he had been placed as from 1st November 1983, at the point of the salary scale at which he was on 29 December 1979, i.e. the date when his educational leave of absence without pay had commenced. He added that, because the salary increments which had accrued during the period of his leave of absence had not been granted to him, he begged that the matter be re-examined and that he be informed accordingly. Respondent No. 3 passed over applicant's letter to the Department of Public Administration and Personnel and asked for their advice on the matter. Acting on the advice and/or instructions of the Director of the aforesaid Department, Respondent No. 3 addressed to the applicant the letter dated 15 September 1984, (Reference Π.Φ. 206), Exh. 14 before me, communicating to him the sub-judice decision dismissing applicant's claim that the aforesaid salary increments be granted to him. The letter is in the following terms:

"Κύριο Λεωνίδα Κ. Λεωνίδου,
Συνεργατικό Λειτουργό, 2ης τάξης,

Έχω οδηγίες να αναφερθώ στην επιστολή σας προς τον Αν. Διευθυντή Υπηρεσίας Δημόσιας Διοικήσεως και Προσωπικού με ημ. 21.2.1984, σχετικά με το θέμα της μισθοδοσίας σας, και σας πληροφορήσω ότι με βάση τα γεγονότα της περιστάσεώς σας, δεν μπορεί να τοποθετηθείτε στο σημείο της κλίμακας που θα φτάνατε αν δε σας είχε παραχωρηθεί η σχετική εκπαιδευτική άδεια. Δεδομένου ότι δεν έχετε αποκτήσει πανεπιστημιακό δίπλωμα ή ισοδύνατο αναγνωρισμένο προσόν με βάση τους όρους του συμβολαίου της εκπαιδευτικής άδειας που είχετε υπογράψει θα πρέπει, σύμφωνα με την πολιτική που ακολουθείται στο θέμα αυτό, να τοποθετηθείτε από την ημερομηνία που αναλάβατε τα καθήκοντα σας, δηλ. την 1η Νοεμβρίου 1983, στο

σημείο της κλίμακας στο οποίο βρισκόσαστε πριν αναχωρήσετε με εκπαιδευτική άδεια.

(Υπ.) Ε.Α. ΧΛΩΡΑΚΙΩΤΗΣ
Διοικητής
Συνεργατικής Αναπτύξεως" 5

Translated in English it reads as follows:

"I have instructions to refer to your letter to the Acting Director of the Department of Public Administration and Personnel dated 21.2.1984 concerning the matter of your salary, and I do inform you that on the basis of the circumstances of your 10 case, you cannot be placed at the point of the salary scale to which you would have reached, but for the grant to you of the relevant educational leave. In view of the fact that you have not obtained a university diploma or a recognised equivalent qualification as per the terms of the agreement for the educational 15 leave which you have signed, you must, in accordance with the policy that is being followed on this matter, be placed as from 1st November 1983, at the point of the salary scale at which you had been before the commencement of your educational leave." 20

Feeling aggrieved with the aforesaid decision, the applicant seeks to have it annulled through the present recourse filed on 17 November 1984, on the following four legal grounds:

1. The respondents acted without the authority of any law and/ or the sub-judice act or decision is not based on any legal provi- 25 sion.

2. The respondents acted under a misconception as to the facts in that-

(a) they ignored the fact that the respondents themselves had obliged the applicant to interrupt his studies by their refusal 30 to renew or extend the educational leave granted to him,

when they knew or they ought to have known that the applicant needed one year to learn the German language and that the average student needs 12 half yearly periods to obtain the degree of the University of Bonn on the subject of National Economy:

(b) they failed to make a full enquiry of all the facts pertaining to the case of the applicant;

(c) they purported to have followed a policy which, however, was never given any publicity and/or is not provided for in any legal provision.

3. The sub-judice decision or act is not reasoned fully or duly or at all and/or the reason stated is illegal or was given in circumstances of misconception as to the law or facts.

4. The sub-judice decision or act amounts to an expression of unfavourable discernment in the treatment of the applicant and/or violates the principles of good administration because the respondents had unjustifiably obliged the applicant to interrupt his studies by their refusal to grant to him further educational leave and they now base their denial of the applicant's rights on their own aforesaid unreasonable action.

In their notice of opposition the respodents deny all the aforesaid contentions of the applicant and allege that-

(i) the sub-judice act and/or decision was legally and correctly taken in accordance with the provisions of the Constitution and the relevant Laws after due enquiry and proper exercise of their discretion by the respondents after taking into consideration all relevant facts and circumstances of the case;

(ii) the sub-judice act and/or decision is fully and properly reasoned and it was not taken in excess or abuse of power.

The hearing of the case was completed before another judge of this Court and judgment was reserved after- (i) counsel for the applicant had filed his written address in support of the recourse, (ii) counsel for the respondents had filed her written address in support of the opposition, and (iii) counsel for the applicant had filed his address in reply. No evidence had been adduced either oral or by way of affidavit. 5

The case was first brought before me on 7 September 1988. Counsel then stated that they adopt the contents of their respective written addresses already filed and requested the Court to adjourn the case so as to prepare themselves for further oral addresses and/or further oral arguments or clarifications. On 24 September 1988, I had the benefit of hearing further oral arguments from both counsel. My judgment was thereafter reserved until today. 10

I propose to deal separately with each of the four legal grounds relied upon by the applicant in the order in which they appear in the Application. 15

The first ground concerns the allegation that the respondents acted without any legal authority and/or that the sub-judice decision is not based on the provisions of any Law. In his written address counsel for the applicant referred to Exh. 14 containing the sub-judice decision and directed his attack to the allegation of the respondents set out therein that they took their decision pursuant to a policy without mentioning at the same time the origin or the legal basis of such policy. It is on the fact of the absence of reference in their letter, Exh. 14, to any specific legal provision pursuant to which the respondents have formulated and followed their alleged policy that the applicant relies to ground his complaint that the respondents acted without any legal authority in taking the sub-judice decision. 20 25 30

In her written address counsel for the respondents failed to answer this submission of the applicants by referring to any Law, Regulation or Administrative Circular on the basis of which the respondents had formulated their policy relied upon, other that the

Circular No. 266, issued by the Director of the Department of Personnel on 7 September 1972, Exh. 13 before me, para. (γ) (iii) of which reads as follows:

"(γ) Η Εγκύκλιος υπ' αρ. 1229 της 26ης Νοεμβρίου 1954 του 'Establishment Secretary' αναφορικώς προς την παραχώρησιν προσαυξήσεως εις τους υποτρόφους εξακολουθεί να ισχύη. Αύτη διαλαμβάνει τα εξής

(iii) Εάν ο υπότροφος εις τον οποίον δεν εδόθησαν οι προσαυξήσεις βάσει της υποπαραγράφου (ii) ανωτέρω επιστρέψη εις την θέσιν την οποία κατείχε προ της αναχωρήσεως του διά την υποτροφίαν, ούτος δέον όπως τοποθετηθή εις την βαθμίδα της κλίμακος εις την οποίαν θα έφτανεν εάν δεν του είχε χορηγηθή η υποτροφία, και να διατηρήση την ημερομηνία προσαυξήσεως του."

Translated in English the above paragraph reads as follows:

"(γ) The Circular No. 1229 of 26 November, 1954 by the 'Establishment Secretary' concerning the grant of increments to holders of scholarships continues to be in force. It contains the following:

(iii) If the holder of scholarship to whom the increments under sub-paragraph (ii) above have not been granted, returns to the post which he held before his departure for the scholarship, he shall be placed at the point of the salary scale which he would reach if the scholarship had not been granted to him and shall keep his incremental date."

It is obvious that the last aforementioned circular applies only to holders of scholarship and does not govern the position of the present applicant to whom leave of absence without pay was granted to enable him to study abroad at his own expense. The reason, as I understand it, for which counsel for respondents made reference in her written address to this circular was to distinguish between the holders of scholarships on the one hand and

persons in the position of the applicant on the other hand and to base on this distinction her argument that, since the applicant is not the holder of a scholarship, he is not entitled to the benefits concerning increments to which holders of scholarship are entitled. She had resorted to this argument since other provisions in force directly governing the case of the present applicant had not crossed her mind and her attention was not drawn to them by the persons who were supposed to have relied on them in reaching their decision now under fire by the applicant.

Be that as it may, in her subsequent oral address before me, counsel for the respondents referred to the General Order III/1.5 which reads as follows:

> "An increment is an increase of salary by a specified amount which, provided certain conditions are satisfied, is granted in accordance with the conditions of appointment of an officer until a maximum is reached. The principal condition which must be satisfied for the grant of an increment is the efficient, diligent and faithful discharge of an officer's duties. A head of department is, therefore, required under Colonial Regulation 42 to sign a certificate (Form F. 154) to the effect that the officer 'has discharged his duties with efficiency, diligence and fidelity' before granting an increment. This certificate should not be signed unless the officer's conduct and work during the preceding twelve months have been entirely satisfactory."

Counsel for the respondents also referred to the circular, Exh. 17, issued by the Director of the Department of Pesonnel on 15 July 1980, under the heading: Leave of absence without pay - Yearly increments, which aimed at the adoption of a general policy governing the grant of yearly salary increments to civil servants, whether permanent or not, to whom leave of absence without pay is granted, and to the relevant Regulations which are attached to that Circular, and she alleged that Regulations 1 and 2 recited hereinbelow provide the lawful basis of the "policy" referred to in the sub-judice decision, Exh. 14.

Regulation 1 reads:

"Τηρουμένων των εν ισχύϊ προϋποθέσεων των διεπουσών την χορήγησιν ετησίων προσαυξήσεων, διά να δικαιούται υπάλληλος εις την χορήγησιν της ετησίας αυτού προσαυξήσεως ούτος δέον όπως συμπληρώση δωδεκάμηνον υπηρεσίαν μετ' απολαβών."

Translated in English Regulation 1 reads:

"1. Subject to the conditions in force that govern the grant of yearly increments, to be entitled to the grant to him of his yearly increment, the civil servant must complete twelve months' service with pay."

Regulation 2 reads as follows:

"2. Leave of absence without pay granted to a civil servant for a total period exceeding 15 days within the year of service, does not count as service for the purposes of increments, and in such a case the date on which the yearly increment of the civil servant is being postponed accordingly, i.e. for a period of time equal to the total period of his leave of absence without pay."

Relying on the aforesaid General Order and Regulations, counsel for the respondents abandoned her submission set out in the notice of opposition and in her written address to the effect that the respondents correctly reached the sub-judice decision in the proper exercise of their discretion and that, in the circumstances of the applicant's case, it was reasonably open to them to take such decision. She submitted, instead, that the applicant, not being the holder of a scholarship and having failed to obtain a univesity diploma, is covered by the aforesaid provisions of General Order III/1.5 and Regulations 1 and 2, Exh. 17, invoked by her, albeit belatedly, which provisions impose on the respondents the obligation to refuse applicant's claim for the increments which might have accrued but for his absence from work following the

granting to him of his educational leave.

In answer to the new stand taken by counsel for respondents, counsel for the applicant submitted that Regulations 1 and 2 hereinabove set out do not apply to the circumstances of the present case because, whereas we are now concerned with increments which accrued during the period of the educational leave of absence without pay granted to the applicant, Regulations 1 and 2, govern cases of leave of absence without pay in general and no specific reference to educational leave is made therein.

I do not accept the above argument in this respect. It is clear to me that, the applicant not being the holder of a scholarship in which case he would come within the exception specifically provided by paragraph (γ)(iii) of the Circular No. 266, dated 7 September 1972, Exh. 13, his case falls squarely under General Order III/1.5, Exh. 16, and Regulations 1 and 2 which form part of the Circular No. 542 of 15 July 1980, Exh. 17, which afford the necessary authority upon which the policy invoked in the sub-judice decision, Exh. 14, was formulated and followed, and which enabled the respondents, in fact bound the respondents, to take the decision now challenged by the applicant.

Leaving at present aside the question whether the sub-judice decision is vitiated so as to be annulled by the fact that no reference is made either in the text of the sub-judice decision or in the official records placed before the Court to the aforesaid General Order and Regulations, Exhs. 16 and 17 respectively, belatedly relied upon by the respondents as afording the necessary lawful basis of the policy mentioned in their decision, which question, though raised in the context of ground 1, is more closely connected with the allegation of lack of due reasoning set out in ground 3 of the Application and which question I consider more convenient to deal with when I shall examine ground 3 of the Application, I am otherwise satisfied that ground 1 of the Application is not a valid ground and it, therefore, fails.

Ground 2 of the Application concerns the allegation that, in

taking the sub-judice decision the respondents acted under a misconception as to the facts pertaining to the case of the applicant. This allegation is based on three distinct reasons.

The first reason upon which Ground 2 of the Application is based refers to the allegation that by their letter dated 27 May 1983; the respondents have refused to renew applicant's educational leave after 29 December 1983, and the applicant's complaint in this respect is that, in reaching the sub-judice decision, the respondents have failed to take into account that, by their aforesaid refusal, they had forced the applicant to interrupt his studies. I do not think that this reason is a valid one. All the correspondence and documents regarding the commencement, the end and the results of the applicant's educational leave of absence without pay to which I have hitherto referred, were in the applicant's file in the possession of the respondents at the time when the sub-judice decision was taken and there is nothing to suggest that they overlooked any part thereof. There is, however, another obstacle in the way of the applicant blocking the way leading to the success of the Application on the first reason of Ground 2. Even if, applicant's allegations to the effect that - (i) by their aforesaid letter dated 27 May 1983, the respondents left no choice to the applicant other than the interruption of his studies, and (ii) in taking the sub-judice decision, the respondents had ignored that fact, were both correct, the applicant again cannot succeed on this reason, inasmuch as the fact allegedly ignored is not a material fact that could possibly influence the respondents to accede to applicant's demand for increments accrued during the period of his leave of absence without pay. Neither under General Order III/1.5, nor under Regulations 1 and 2 of Circular No. 542 dated 15 July 1980, which govern the case of the applicant; the matter allegedly ignored by the respondents is in any way relevant. Equally irrelevant is the reason or reasons why the applicant has failed to obtain the university diploma which was the object of his studies during his educational leave of absence without pay.

As I have already stated, the respondents were bound under the aforesaid General Order and circular to take in the case of the

applicant the sub-judice decision which they have taken, irrespective of whether the non-completion of the applicant's studies was due to the unreasonable refusal of the respondent to renew applicant's leave of absence after 29 December 1983, or to the applicant's own fault. I might add in this respect that more than necessary was said by both sides on the validity, the reasonableness and the effect of the contents of the respondents' letter dated 27 May 1983, which were not and could not have been the subject of scrutiny in the present recourse. If the applicant believed that he had been aggrieved by the contents of the aforesaid letter or that the letter contained a decision that could be challenged under article 146 of the Constitution, he ought to have filed a recourse within 75 days from receipt thereof.

I shall next deal with the second reason on which Ground 2 of the Application is based which refers to an allegation that the respondents failed to carry out a full investigation into all the facts which were relevant to the case of the applicant. The allegation is too general and vague. No reference was made by counsel in his argument which are the relevant facts which he had in mind and which might have influenced the respondents in taking a decision different than the one which they have taken had they come into light through a proper and full investigation by the respondents. No evidence or allegation have been adduced as to the existence of any such facts other than the interruption of applicant's studies already dealt with which remained concealed due to the faulty investigation or to the lack of any investigation by the respondents.

In *Paraskevas Lordos and others v. The Republic* (1974) 3 C.L.R. 447, it was held that, in the absence of any concrete evidence establishing lack of a correct ascertainment of relevant facts, the presumption of regularity - "omnia presumuntur rite esse acta" applies and the conclusion to be drawn is that the administrative decision was reached after proper ascertainement of facts. See also *The Republic of Cyprus (through the Council of Ministers v. Nicolas Ekkeshis* (1975) 3 C.L.R. 548, where it was held that "the burden of establishing that an administrative decision was reached on the basis of a misconception about a ma-

terial fact lies on the person challenging the validity of such decision on this ground".

The applicant in this case has failed to discharge the burden cast upon him.

5 I shall lastly refer to the third reason put forward by the applicant and which is in essence a repetition of the contents of Ground 1, which I have already ruled to be not a valid ground. There is nothing I wish to add to what I have already stated above concerning the policy followed by the respondents, a policy which, as I have already found, had a lawful basis.

10 For all the above reasons Ground 2 of the Application also fails.

Ground 3 of the Application has two legs. The first leg refers to the allegation that the respondents failed to state the required reasons for their decision. The second leg refers to the alternative
15 allegation that the reasons given by the Respondents are illegal. *Counsel did not elaborate specifically on the latter leg of Ground* 3. The reasoning of administrative decisions is rendered illegal in case of either vagueness or of misconception. Counsel did not complain that the reasoning in the present case is vague. Miscon-
20 ception was raised as a separate ground, i.e. Ground 2 above which I have already examined and dismissed. What remains, therefore, to be determined is whether respondents have stated the required reasons for their decision or not.

Due reasoning is a sine qua non for the validity of administra-
25 tive decisions. The object of this rule is twofold. First, to enable all persons affected by the decision, especially those whose rights, as they understand them, have been taken away, curtailed or not recognised to understand the reasons behind such decision. Secondly, to enable this Court on review to judge in each case
30 whether the decision is well founded in fact and in law. The above object of the rule can only be achieved if the reasons given are adequate, if they are expressed in clear and unambiguous

terms in a manner that reasonable people affected thereby would understand them, and if they are stated either in the decision itself or at least in the relevant official records which are put before the Court. The adequacy of the reasoning is a question of fact depending upon the nature of the decision concerned. The above principles are born out of a long line of cases decided by this Court including *Elli Korai v. The Cyprus Broadcasting Corporation* (1973) 3 C.L.R. 546, *Georghiades v. The Republic* (1967) 3 C.L.R. 653, and *Papadopoulos v. The Republic* (1968) 3 C.L.R. 662.

With the above principles in mind I now turn to examine the reasons given by the respondents for their sub-judice decision. There is no suggestion that any reasons additional to those found in the decision itself are to be found in the official records which have been placed before me. In my view the nature of the present decision did not require any further reasons to be stated than those actually given which I consider as reasonably adequate. It is, however, common ground that the General Orders, Exh. 16, and Circular No. 542 and the Regulations attached thereto, Exh. 17, upon which the policy relied upon by the respondents was founded, are not mentioned at all in the sub-judice decision or anywhere else. It is also true that in her written address counsel for the respondents seeks to justify the respondents' decision by reference to another circular which has no direct bearing on the facts of the instant case. In the circumstances, the maximum that can possibly be said against the sub-judice decision with regard to its reasoning is that the decision cannot be validly based on the reasons of law stated therein. The question, therefore, that poses for determination is whether this defect can vitiate the decision or not. The answer to it is in the negative. In *Costas Pikis v. The Republic* (1967) 3 C.L.R. 562, Triantafyllides, J. (as he then was) said the following at pp. 575 and 576:

"Even if an act or decision could not be validly based on the reasons of law actually given in support thereof, but it is nevertheless valid in law for some other reason, the relevant Administrative law jurisprudence has gone so far as to lay down

that such act or decision should be judicially upheld. In its Decision 2122/1956 (vol. 1956 Γ, p. 1028 at p. 1030) the Greek Council of State has stated:

'Νομίμως, όθεν, απερρίφθη, ει και επ' άλλη αιτιολογία η ως άνω αίτησις αναθεωρήσεως του προσφεύγοντος, διά της προσβαλλομένης αποφάσεως, και κατ' ακολουθίαν απορριπτέα αποβαίνει ως νόμω αβάσιμος η υπό κρίσιν ένδικος αίτησις...'

('There has lawfully, therefore, been rejected, by means of the decision challenged, even though for other reasoning, the said *application of the Applicant for a review, and thus the sub* judice recourse has to be rejected as unfounded in law').

So, even if all the reasons given in the letter exhibit 2, in support of the sub judice decision, were not correct in law, I would still be prepared to find that, in the circumstances, the Respondent Council of Ministers could not have lawfully done otherwise than to turn down Applicant's request, contained in exhibit 1."

Reference may also be made to *Miltiades Papadopoulos v. The Republic* (1968) 3 C.L.R. 662, where, adopting Kyriakopoulos on Greek Administrative Law, L. Loizou, J. said the following at p. 674:

"According to Kyriakopoulos on Greek Administrative Law vol. B at p. 387, wrong legal reasoning does not lead to annulment if the decision can have other legal support. To the same effect are also the Decisions of the Council of State 666/1936 reported in vol. A.II of 1936 at p. 618, 1606/1950 reported in vol. B of 1950 at p. 128 and 1850/1950 reported in vol. B of 1950 at p. 321.""

Finally it is useful to refer to *Savvas Spyrou v. The Republic* (1973) 3 C.L.R. 478, where Triantafyllides, P. said at p. 484:

"It is, however, open to an administrative judge - and I am dealing with these cases in such a capacity - to uphold the validity of an administrative decision on the basis of a lawful reasoning therefor even though such reasoning is different from the reasoning given by the administration for reaching such decision and even if the reasoning given by the administration is legally defective (see, inter alia, the decisions of the Greek Council of State in Cases 48/1968, 132/1969, 2134/1969 and 2238/1970)."

There does exist, as I have already said, lawful reasoning supporting the sub-judice decision, i.e. the General Orders, Exh. 16, and the Circular No. 542, Exh. 17, and even if the reasoning given by the respondents in their decision is defective in the sense that no reference is therein made to Exh. 16 and 17 justifying the policy which they had followed and to which they had expressly referred, I would still dismiss Ground 3 of the Application as not being a valid reason for annulment of the sub-judice decision.

Ground 4 of the Application is the last ground that remains to be examined. This ground refers rather to the alleged unreasonable refusal by the respondents to renew applicant's educational leave of absence after 29 December 1983 communicated to the applicant by the letter dated 27 May 1983. I have hereinbefore expressed my views about applicant's complaint against the contents of this letter. I repeat that if those contents amounted to an administrative decision, the applicant could have challenged it in time. This recourse is too late a stage for the applicant to allege that the respondents acted in 1983 unreasonably or unlawfully. What the applicant demands in essence is that the respondents ought to have reflected on their decision to refuse further educational leave to the applicant in May 1983, admit that they had then acted unreasonably and unjustifiably, consider themselves solely responsible for the interruption of applicant's studies and for his non-obtaining the university diploma, and with all these in mind in September 1984 when examining his application for increments which had accrued whilst he was absent from his work studying abroad, to exercise a discretion which they do not pos-

sess and to place him at a higher point of his salary scale contrary to the General Orders, circulars and regulations governing the matter. Their failure to do this amounts, according to the applicant, to an expression of unfavourable discernment against him and offends the rules of good administration. Neither the respondents nor this Court can subscribe to this line of thinking or demand of the applicant. Ground 4 of the Application also fails.

In view of the foregoing I rule that the recourse of the applicant cannot succeed and, therefore, it is dismissed accordingly. I do not, however, propose to make an order for costs against him having in mind all relevant considerations.

Application dismissed.
No order as to costs.