1984 April 18

[A. LOIZOU, SAVVIDES, PIKIS, JJ.]

COSTAS KAMPIS,

Appellant-Plaintiff,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE ATTORNEY-GENERAL,

Respondent-Defendant.

(Civil Appeal No. 6552).

Damages under Article 146.6 *of the Constitution—Right to—Such right vests in the appellant following the annulment of the administrative act challenged by a recourse—And he cannot be deprived of this right by any subsequent decision of the administration.*

The appellant, a school teacher in the elementary education, was interdicted as from 11.11.78, upon the commencement of a disciplinary investigation against him and was paid half the amount of his emoluments. Upon a recourse by the applicant, challenging the interdiction, the Supreme Court annulled the interdiction and an appeal was filed by the Republic against such annulment which was withdrawn on the 26th June, 1980. Whilst the appeal was pending the Council of Ministers decided on the 13th March, 1980 not to approve the refund of any part of the emoluments which have been withheld from appellant during his interdiction.

On the 18th September, 1980 the appellant instituted in the District Court a civil action for damages under Article 146.6* of the Constitution, which arose out of his interdiction which had been annulled.

The trial Judge dismissed the action having held that he had no jurisdiction to deal with the question of damages unless the decision to withhold payment was annulled by the Supreme Court under Article 146 of the Constitution; and hence this appeal.

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* Article 146.6 is quoted at pp. 317–18 post.

Held, that after the annulment of the decision interdicting the appellant, any right or deduction from his emoluments has been obliterated: that in consequence a right for damages under Article 146.6 of the Constitution vested in the appellant and he could not be deprived of such right by a subsequent decision of the administration: accordingly the appeal must be allowed.

Appeal allowed.

Cases referred to:

Veis and Others v. Republic (1979) 3 C.L.R. 390;

Kantziais v. The Ministry of Interior (1982) 1 C.L.R. 606;

Kolokassides v. Republic (1965) 3 C.L.R. 542;

Falas v. Republic (1983) 3 C.L.R. 525;

Paraskeva and Another v. The Municipal Committee of Limassol (1984) 3 C.L.R. 54;

Frangoullides v. Republic (1982) 1 C.L.R. 462;

Georghiou v. Attorney-General (1982) 1 C.L.R. 938;

Petrides v. Greek Communal Chamber and Another (1965) 3 C.L.R. 39;

Republic v. Menelaou (1982) 3 C.L.R. 419;

Pieris v. Republic (1983) 3 C.L.R. 1054;

Kyriakides v. Republic, 1 R.S.C.C. 66 at p. 74;

Decisions of the Greek Council of State Nos: 252/63, 2223/63 and 1497/70.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 24th March, 1983 (Action No.3920/80) whereby his action for the payment to him of part of his salary and the rent allowance during the period of his interdiction was dismissed.

E. Markidou (Mrs.), for the appellant.

A. Vassiliades, for the respondent.

Cur. adv. vult.

The following judgments were read:

A. Loizou J.: The appellant a school-teacher was interdicted as from the 11th November 1978, upon the commencement of investigations into disciplinary offences. He was paid there-

after half the amount of the emoluments of his office and payment of rent allowance and of the 13th salary was withheld.

On the 20th January 1979, the applicant filed in the Supreme Court a recourse under Article 146.1 of the Constitution, seeking thereby the annulment of the decision by which he was so interdicted. That recourse was heard together with other recourses by a Judge of this Court (Triantafyllides, P.), who by his judgment reported as *Veis and others v. The Republic* (1979) 3 C.L.R. 390, annulled the decisions whereby all the applicants in that case, including the present appellant were interdicted, and in the exercise of the powers purported to be given to him by rule 19 of the Supreme Constitutional Court Rules, 1962 and section 47 of the Courts of Justice Law, 1960 (Law No. 14 of 1960), ordered a stay of execution of his judgment for the period of six weeks during which an appeal might be made against it so as to preserve the then existing position while both sides would be considering such an eventuality. On August 21st 1979, the Education Service Commission filed an appeal against the said judgment which was fixed for hearing on the 3rd December 1979. An application was filed in the meantime for an order staying its execution till the determination of that appeal which application was granted by the Court. Whilst the appeal was pending the Council of Ministers by its Decision No. 18.907, dated 13th March, 1980, decided not to approve the refund of any part of the emoluments withheld from officers who had been interdicted, including the appellant. Furthermore on the 20th February 1980, the Council of Ministers dismissed the appellant from the service under the provisions of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws, 1977 to 1978 (Suspension of Proceedings) Law 1978 (Law No. 57 of 1978). The appeal, however, was withdrawn and struck out on the 26th June 1980.

On the 18th September 1980, the appellant instituted in the District Court of Nicosia a civil action for the recovery of damages arising from his interdiction which had been annulled.

It was agreed at the commencement of the hearing of the action that the so nonrefunded amounts of money to the appellant, between the 11th November 1978, when he was interdicted until the 22nd February 1980, which date is admitted in the defence that the appellant was dismissed from the service, were £1,657.-.

It was the case of the appellant that by virtue of Article 146 paragraph 6, of the Constitution he was entitled to the aforesaid amount once the decision of the Educational Service Commission, by which he was interdicted had been annulled, and that the Decision of the Council of Ministers No. 18.907 by which it decided not to pay the emoluments withheld upon interdiction could not impede the course of justice, once there was pending before the Court the recourse of the appellant against the decision to be interdicted and the decision of the Supreme Court became final on the 26th July 1980, when the appeal was withdrawn.

On the other hand it was argued on behalf of the respondents that the said decision of the Council of Ministers was an independent executory administrative act which had to be challenged before the Supreme Court under Article 146.1 of the Constitution and if annulled, then the appellant was entitled to proceed in the District Court for the recovery of the emoluments so withheld.

The learned trial Judge dismissed this action having accepted the submission of counsel for the respondents to the effect that he had no jurisdiction to deal with the question of compensation unless the decision to withhold payment was annulled by the Supreme Court under Article 146 of the Constitution. As against this judgment the present appeal has been filed.

It is obvious that by the aforesaid decision of the Council of Ministers the effect of the judgment of this Court in *Veis and Another* (supra), by which the interdiction of the appellant and the other officers in the same situation as himself was annulled and its consequences as recognized by paragraphs 5 and 6 of Article 146 of the Constitution and the rights that accrued thereunder were being thwarted. The said two paragraphs read as follows:

> "5. Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned.
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> 6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satis-

faction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant."

I do not intend to examine the Case Law of this Court and the extent that it is relevant or distinguishable to the issue before us as that has been ably done by my Brothers whose judgments I had the advantage of reading in advance. To my mind the position in this case is clearly governed by the aforesaid provisions of the Constitution by virtue of which the organ or authority or person concerned was bound by the annulling decision given under paragraph 4 of Article 146 of the Constitution in the case of *Veis* (supra) and to which effect had to be given. As that, however, was not done, paragraph 6 of the said Article came into play and the applicant has become entitled, once his claim was not met to his satisfaction by the administration, to institute legal proceedings in a Court - and a Court in this sense is a Civil Court - for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by it or to be granted such other just and equitable remedy as such Court is empowered to grant. He could not, therefore, in any way be deprived of such accrued right by any subsequent step taken by the administration.

Nor do I need to turn to our usual sources of the General Principles of Administrative Law as pronounced by the French Conseil d'Etat and the Greek Council of State or expounded in authoritative textbooks on the subject as neither the position in France nor in Greece can be of assistance to us once we have express constitutional provisions which give rise to rights and prescribe a definite course of action to be followed by a person aggrieved and whose claim is not met to his satisfaction by the administration.

For all the above reasons I would allow the appeal, the judgment of the trial Court should be set aside and in consequence thereof judgment should be entered for the appellant against the respondents in the sum of £1,657.- with costs here and in the Court below.

SAVVIDES J.: The appellant was a school teacher in the Elementary Education. On the 9th November, 1978 he was informed by letter that he was interdicted as from 11.11.78, in view of the fact that there had been ordered by the appropriate authority concerned, the conduct of investigation for the possible commission by him and other educationalists of certain disciplinary offences.

As a result, as from the 11th November, 1978, his emoluments were reduced to half and he was deprived of other benefits, including rent allowance. The appellant and a number of educationalists who were also interdicted for the same causes, filed recourses in the Supreme Court challenging the validity of such decision. The judgment of the Supreme Court in all such recourses was delivered on the 30th July, 1979 and by same the decision of the interdiction of the appellant and other educationalists, whose recourses were heard together, was annulled, but stay of execution was granted for the reasons given by the trial Court in its judgment "for the period of six weeks during which an appeal may be made against it, so as to preserve the existing position while both sides will be considering such eventuality". (See *Veis and others* v. *The Republic* (1979) 3 C.L.R. 390).

On the 21st August, 1979 the respondent filed an appeal against the above judgment and on the 6th September, 1979 filed also an application for an order staying the execution of such judgment till the determination of the appeal. By its decision dated 15th November, 1979, the Court granted the stay of execution applied for subject to the condition that the 3/4ths of the monthly emoluments of the appellant be paid to him. (See *Veis and others* v. *The Republic* (1979) 3 C.L.R. 537). Whilst such appeal was pending the Council of Ministers on 22.2.1980 decided to terminate the services of the appellant and by a subsequent decision (No. 18907 dated 13.3.1980) it decided to refuse the refund of any money deducted from the emoluments of all those interdicted, including the appellant.

The appeal filed against the judgment of the Court annulling the interdiction was subsequently withdrawn and was dismissed on the 26th June, 1984.

The appellant as a result of the refusal of the respondent to pay to him any amount deducted from his emoluments during

his interdiction, as well as any amount due for other benefits, to which he was entitled and which had not been paid to him, instituted proceedings in the District Court of Nicosia for their recovery. At the hearing of the action parties agreed the amount to which the appellant might have been entitled, if successful in his action, at £1657.- and the issue which was left for determination was whether the respondent was liable to pay such amount in view of the decision of the Council of Ministers of the 13th March, 1980. It was the substance of the contention of counsel for the respondent at the hearing of the action that the appellant could not pursue his claim, in view of the decision of the Council of Ministers of the 13th March, 1980, as he had taken no steps before the competent Court to annul such decision. From what appears in the judgment of the trial Court such contention was accepted by the trial Judge who as a result, concluded as follows:

> "It is apparent in the present case that once Decision No. 18907 dated 13.3.1980 of the Council of Ministers amounts to an administrative act, the District Court has no jurisdiction to adjudicate on it in any way. Therefore, I have no jurisdiction to examine whether the said decision of the Council of Ministers amounts to an interference with the Courts of Justice, given that the case was still pending before the Supreme Court. This is a matter for the Supreme Court to examine which is the only Court having exclusive jurisdiction to examine matters of administrative law.
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> Once I have no jurisdiction for the reasons I have mentioned, to examine the decision of the Council of Ministers No. 18907 dated 13.3.1980, as this is a matter within the jurisdiction of the Supreme Court, the present action should be dismissed".

As a result, the present appeal was filed, challenging the correctness of such judgment on the following grounds:

(a) That there was a misconception of law on the part of the trial Court that it was not vested with jurisdiction in the matter and that the competent Court with exclusive jurisdiction was the Supreme Court.

(b) The trial Court was wrong in his finding that the act and/or decision of the Council of Ministers dated 13.3.

1980 is an executory administrative act which can only be challenged before the Supreme Court under Article 146 of the Constitution.

(c) Further and/or in the alternative, the trial Court did not have before it evidence as to notification or communication to the applicant or publication of the said decision of the Council of Ministers.

Counsel for the appellant in advancing her arguments in support of the appeal, submitted that the District Court had exclusive jurisdiction in the case as the claim was for emoluments due to the appellant and which were payable to him after the annulment by the Supreme Court of the decision of the respondent on the basis of which such emoluments were deducted, under Article 146.6 of the Constitution. The Administration, counsel contended, could not by a subsequent decision deprive the appellant of his private legal right to claim damages, which vested in him after the annulment of the administrative act from which the claim sprang. In conclusion, she submitted that the trial Court was wrong in his ruling that it had no jurisdiction to deal with appellant's claim.

Counsel for the respondent submitted that the trial Court was right in rejecting appellant's claim. It was his contention that the appellant could not pursue a claim for the recovery of emoluments alleged as due to him by civil action in view of the Decision of the Council of Ministers to refuse payment of such benefits. So long as such administrative decision remained unchalleged and its validity has not been successfully contested before the Supreme Court no right under Article 146.6 arises.

Article 146.6 of the Constitution provides as follows:

"Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned to institute legal proceedings in a Court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the Court or to

be granted such other just and equitable remedy as such Court is empowered to grant".

The extent of the right thus given to the person aggrieved by this constitutional provision has very rightly been described in *Petrides* v. *The Greek Communal Chamber and Another* (1965) 1 C.L.R. 39 as "most significant and important". The scope of Article 146.6 is explained in *Petrides* case with clarity. At pp. 51 and 52 Vassiliades, P. had this to say:

"It may also be recalled at this point that the decision of the Supreme Constitutional Court to declare the rejection of appellant's claim as 'null and void and of no effect whatsoever', was a decision under Article 146.4, which under Article 146.5 of the Constitution, was 'binding on all Courts and all organs or authorities in the Republic'.

It thus became the duty of the respondents to 'give effect to, and to act upon' that decision in the appropriate manner".

The right of compensation is not a right peculiar to our Constitution. A similar right exists under the Greek Administrative Law and in the "Greek Administrative Law" by Kyriacopoullos, 4th Edition, 1961, Vol. 3 at p. 155 we read:-

" 'Η ὑποχρέωσις τῆς διοικήσεως εἰς ἀκριβῆ συμμόρφωσιν πρὸς ἀκυρωτικὴν ἀπόφασιν, ἐκδοθεῖσαν ἐπὶ ἐκτελεσθείσης ἤδη πράξεως, συνίσταται εἰς τὴν ἐξαφάνισιν τῶν ἀποτελεσμάτων αὐτῆς, ἤτοι εἰς τὴν ἀποκατάστασιν τῆς προηγουμένης πραγματικῆς καταστάσεως.

'Η ἀποκατάστασις δέον νὰ εἶναι πλήρης, ἤτοι νὰ περιλαμβάνῃ πάντα τὰ ζημιοῦντα τὸν προσφυγόντα ἀποτελέσματα τῆς πράξεως ἐξ ἀρχῆς. 'Η ἀποκατάστασις ὅμως δὲν περιλαμβάνει καὶ τὴν ἀνόρθωσιν τῆς ὑλικῆς ζημίας. Τὸ Συμβούλιον 'Επικρατείας, μὴ κρῖνον ἄλλωστε περὶ τῶν ἐξ αὐτῆς δικαιωμάτων τοῦ προσφυγόντος καὶ τῶν ἀντιστοίχων ὑποχρεώσεων τῆς διοικήσεως, δὲν ἐπιδικάζει χρηματικὰς καταβολὰς....."Αν δὲ ἡ διοίκησις ἀρνῆται νὰ ἐκπληρώσῃ τοιαύτας ὑποχρεώσεις, ἀνακύπτει πλέον ἀστικὴ διαφορὰ διὰ τὴν ὁποίαν ἁρμόδια εἶναι τὰ πολιτικὰ δικαστήρια, τὰ ὁποῖα δεσμεύονται ὡς πρὸς τὸ ὑπὸ τοῦ Σ.Ε. κριθὲν ζήτημα, περὶ οὗ γεννᾶται δεδικασμένον ἐκ τῆς ἀποφάσεως τούτου".

("The obligation of the administration to strict compliance to an annulling judgment, delivered on an already executed act, consists of the elimination of its results, i.e. the restoration of the previous actual situation.

The restoration must be complete, i.e. it must include all the results injurious to the applicant from the start. But the restoration does not include the restoration of material damage. The Council of State not having decided on the rights of the applicant acrued by it and the respective obligations of the administration, does not adjudge monetary payments. . . . . If the administration refuses to fulfil such obligations, there arises a civil dispute for which the appropriate Courts are the Civil Courts, which are bound as to the decided matter by the Council of State, for which there is a res judicata from its decision").

And in Vol. 2 of the same authority at page 474, we read:

"..... Τοιουτοτρόπως ή έπιδίκασις άποζημιώσεως είς βάρος τῆς δημοσίας διοικήσεως άπέβη μορφή τις καταστολῆς τῶν παραβάσεων τῆς άρχῆς τῆς νομίμου διοικήσεως".

("..... Thus the adjudication of compensation against the public administration has become a form of suppression of the violation of the rule of lawful administration").

In *The Attorney-General of the Republic* v. *Markoullides and another* (1966) 1 C.L.R. 242 at pp. 254, 255 it was held:

"Under paragraph 6 of Article 146, legal proceedings may be instituted, if the claim of a 'person aggrieved' by a decision which has been declared to be void in a recourse under such Article is not met to his satisfaction by 'the organ, authority or person concerned'. In the light of the whole context of Article 146, and bearing also in mind that in essence paragraph 6 of the said Article is an indemnification provision forming part of the scheme of Article 146 we came to the conclusion that 'the organ, authority or person concerned' must mean the organ, authority or person the decision of which has been annulled under Article 146 with the result of giving rise to a claim under paragraph 6 of Article 146".

(see also *Kyriakides and The Republic*, 1 R.S.C.C. p. 66 at p. 74; *Georghiou* v. *The Republic* (1982) 1 C.L.R. 945).

Reverting now to the facts of the present case the first question which has to be considered is whether the prerequisites of Article 146.4 are satisfied, that is, the existence of a decision of the Supreme Court annulling the decision of the respondent for the interdiction of the appellant which, in accordance with Article 146.5 is binding on all Courts and all organs of the Republic. The deduction of the emoluments of the appellant was made in accordance with a decision taken by the respondents to interdict the applicant pending disciplinary proceedings against him. Such decision was challenged by the appellant before the Supreme Court with the result that the said decision was nullified by the Court. As a result of such annulment any right of deduction from his emoluments has been completely obliterated. In consequence a private right vested in the appellant which under Article 146.6 of the Constitution he could pursue by instituting legal proceedings for the recovery of damages. The appellant could not be deprived of such right by a subsequent decision of the administration. Such a course on the part of the Administration to deprive a person of his private rights which vested in him under the provisions of Article 146.6 of the Constitution is arbitrary and illegal and amounts to a violation of Article 146.6 of the Constitution and of the doctrine of separation of powers as interfering with a course which is within the exclusive competence of the civil Courts.

In the result, I have come to the conclusion that the finding of the trial Court that it had no jurisdiction in the case was wrong. As I have already explained, there was a private right of the appellant which has been violated and in respect of which he could pursue a claim for damages by legal proceedings before a civil Court.

The appeal is, therefore, allowed and bearing in mind that the amount to which appellant is entitled has been agreed, judgment is given for the appellant against the respondent for £1,657.- with costs here and in the Court below.

PIKIS J.: A legal question of considerable importance must be answered in this appeal. It relates to the rights accruing to a successful litigant before a Court of revisional jurisdiction

consequent on the nullification of an administrative act. The answer turns mainly on the interpretation of the provisions of Article 146.6 of the Constitution and its application to the circumstances of this case. Article 146.6 confers a right to damages suffered as the result of the act, decision or omission declared invalid by the Supreme Court in the exercise of its revisional jurisdiction.

The facts defining the question are the following. Costas Kampis, the appellant, a school teacher, was interdicted on 11th November, 1978, in connection with the examination of disciplinary offences then under investigation. His salary was halved and other benefits suspended for as long as interdiction lasted. It seems a number of educationalists were interdicted together. They joined in challenging the validity of their interdiction by the initiation of proceedings before the Supreme Court. The proceedings resulted in the nullification of the decision and the discharge of interdiction—*Veis and Others* v. *The Republic* (1979) 3 C.L.R. 390. Enforcement of the judgment was stayed on terms pending the determination of an appeal filed by the Republic—*Veis and Others* v. *The Republic* (1979) 3 C.L.R. 537. The appeal was subsequently withdrawn. It was dismissed on 26th June, 1980.

The appellant instituted the present proceedings, a civil action for the recovery of damages arising from his wrongful interdiction. He claimed the recovery of loss arising therefrom in exercise of his rights under Article 146.6 of the Constitution. The parties agreed on the loss suffered and made a declaration to that effect before the trial Judge. The agreed damage was £1.657.–. The Republic however disputed liability. They joined issue with the plaintiff on his right to pursue the proceedings in view of a decision of the Council of Ministers taken on 13th March, 1980, denying every benefit of the applicant during interdiction. To complete the picture it may be mentioned that by another decision of the Council of Ministers, irrelevant for the purposes of the present proceedings, the appellant was dismissed from the educational service as from 31st January, 1980. The loss suffered by the appellant was computed by reference to the benefits he was entitled to prior to the date of his dismissal.

Before the trial Court it was argued, for the Republic, no

civil remedy could be pursued for the recovery of the loss before the nullification of the decision of the Council of Miniters. Counsel for the Republic argued before us in support of the above proposition not withstanding the absence, as he acknowledged, of apparent authority in the Council of Ministers to deny the benefits in question. Unless the decision of the Council of Ministers is discharged by a Court of competent jurisdiction, that is, the Supreme Court in the exercise of its revisional jurisdiction no rights can vest under Article 146.6 of the Constitution. On behalf of the appellant it was submitted the right of the appellant accrued upon nullification of the decision to interdict him and pursuit of a civil remedy became inevitable in view of the refusal of the Republic to compensate him for the loss suffered. The trial Judge found for the Republic, he ruled no right to damages could vest in the appellant before elimination of the aforementioned decision of the Council of Ministers. He derived support for his decision from the case of *Kantziais* v. *The Ministry of Interior* (1982) 1 C.L.R. 606. In that case the Supreme Court upheld the dismissal of the claim of a police officer for remuneration for the leave period to which he was entitled in the absence of challenge and discharge by a competent Court of the administrative decision denying him the benefits in question.

The present appeal is directed against the above decision and aims at its reversal. Counsel for the appellant argued judgment under appeal was taken in breach of the provisions of Article 146.6 of the Constitution and in defiance of the principle of res judicata binding the administration to heed and enforce the judgment nullifying interdiction. Counsel for the Republic supported the decision of the trial Court notwithstanding his acknowledgment that the decision of the Council of Ministers set up as a barrier to the claim of the appellant, does not appear to be founded on any legal premise. An administrative decision, he submitted, even if taken by an incompetent organ is nevertheless cognizable in law and must be annulled if a party wishes to do away with its consequences. In support he cited inter alia the decisions in *Kolokassides* v. *The Republic* (1965) 3 C.L.R. 542 and *Falas* v. *The Republic* (1983) 3 C.L.R. 525. The proposition propounded by counsel was not, it seems to me, directly in issue in the aforesaid cases. Recently I had occasion to examine in *Paraskeva and Another* v. *The Municipal Committee*

of Limassol dated 14th January, 1984, (not yet reported)* the implications of a decision taken by an incompetent organ. The position appears to be this. A decision of an administrative body creates legal rights at public law even if vulnerable to be set aside for lack of competence provided it emanates from a body having apparent authority in law to deal with the matter regulated by the decision. (See also Decisions of the Greek Council of State in 252/63, 2223/63, 1497/70). So a decision taken by an organ of administration having manifestly no authority in the matter can be ignored.

Mrs. Markidou submitted that not only the Council of Ministers altogether lacked authority in the matter but the decision of the Council of Ministers constituted an indirect attempt to defeat the decision in *Veis and Others* (supra) in defiance to the binding effect of the judgment and generally the doctrine of res judicata as applied in administrative law. To decide the case attention must be focussed in the first instance, on the right conferred by Article 146.6 of the Constitution. Specifically we must decide whether it can be regulated, suspended or generally be made the subject of administrative action. In the last analysis this is what the Council of Ministers purported to do. They took away or extinguished the right that vested in the appellant by virtue of Article 146.6 of the Constitution to claim damages following the annulment of his interdiction. The right conferred by the Constitution in this respect is by the plain provisions of paragraph 6 of Article 146 unqualified. It provides "shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned to institute legal proceedings in a Court for the recovery of damages.....". And as the appropriate organ of the Republic, in this case the Ministry of Education in collaboration with the Ministry of Finance, failed to satisfy his claim a right vested in the appellant for the loss suffered as a result of the decision that was annulled.

In *Frangoulides* v. *The Republic* (1982) 1 C.L.R. 462 we examined the nature and implications of the right conferred by Article 146.6 and as we noted it is a sui generis right providing for a species of libility designed to make administrative review effective. It is incidental to administrative review. In some

* Now reported in (1984) 3 C.L.R. 54.

respects it is comparable to Article 172 of the Constitution. The two articles regulate civil liability of the State in different areas or activity. See *Georghiou* v. *The Attorney-General* (1982) 1 C.L.R. 938 and *Pantelis Petrides* v. *The Greek Communal Chamber and Another* (1965) 3 C.L.R. 39. The right accruing under Article 146.6 although arising from action of the administration on the domain of public law it is a private right, peculiarly associated with the loss suffered by a successful litigant before a revisional Court. The jurisdiction of the civil Court is limited to the ascertainment of the loss and its quantification. Article 146.6 creates an important constitutional civil law right cognizable by a civil Court. Any attempt to take away this right, as the one made by the Council of Ministers in this case, must be struck down as unconstitutional. And such was the action of the respondents in this case. Moreover as a matter of legal analysis a decision of the administration with regard to the satisfaction of a civil law right is not an executory act in the domain of public law. Whenever the State is a party to a dispute concerning a matter of private law its position is no different from that of any other party to such dispute. See *Republic* v. *Menelaou* (1982) 3 C.L.R. 419. The decision of the Council of Ministers can at best be regarded in law as a refusal on the part of the authorities to satisfy the claim of the appellant for damages arising from the nullification of the decision to interdict him.

Moreover, the decision of the Council of Ministers had no effect in public law for the Council of Ministers had no competence under the law to decide the matter they purported to resolve by their decision. The interdiction of educationalists and matters incidental thereto are matters exclusively amenable to the competence of the appropriate educational authorities as laid down in Law 10/69. The decision of the Council of Ministers had no noticeable effects in law.

Lastly there is some force in the submission of counsel for the appellant that the decision of the Council of Ministers constituted an attempt to defeat the consequences of the decision of the Court in *Veis and Others* in breach of the provisions of Article 146.5 of the Constitution. The subject of res judicata was discussed by the Full Bench of the Supreme Court in *Pieris* v. *The Republic* (1983) 3 C.L.R. 1054. However, I consider

it unnecessary because of the outcome of this appeal to pronounce finally whether res judicata was breached in this case.

The case of *Kantziais* (supra) relied upon by the trial Judge is distinguishable from the present case. In that case there was a dispute as to the entitlement of the plaintiff to leave benefits. A decision of the appropriate administrative authority purported to settle the matter. The decision remained unchallenged. The entitlement of the plaintiff to the benefits claimed could properly be made the subject of an administrative decision. If that decision had been annulled, as in the case before us, no subsequent action of the administration could bar his claim.

In the result the appeal is allowed, the judgment of the trial Court is set aside. Judgment is given for the appellant for £1,657.– with costs here and in the Court below.

Appeal allowed.