

1985 October 24

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EFSTATHIOS CHRISTODOULIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF EDUCATION,
2. THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 539/82).

5 *Legitimate interest—Constitution—Article 146.2—A person is deprived of a legitimate interest to challenge an administrative act, if he accepts it without protest and reservation of rights, freely and voluntarily—An educationalist who freely and voluntarily without reservation of rights and without protest submitted his resignation, because he was not able to comply with conditions imposed regarding the grant to him of leave of educational absence, does not possess a legitimate interest to challenge an administrative*

10 *act, whereby his application submitted after his re-appointment to the service that the period of his absence until his re-appointment be recognised as educational service, was rejected.*

15 *Time within which to file a recourse—An act of an informatory character repeating a previous administrative act and its reasoning does not entail a new beginning of the time period provided in Article 146.3 of the Constitution.*

20 *Administrative act—Executory act—An act of an informatory character repeating a previous administrative act and its reasoning lacks executory character.*

Circular No. 71 M. P. 6509/54.

The applicant, who was first appointed as an educationalist in the Secondary Education on 1.9.1954 and served in such capacity till the end of the school year 1966-67 and now holds the post of Inspector of Secondary Education, to which he was appointed on 1.9.1973, challenges by the present recourse the refusal of the respondents to recognise as educational service, a period of six years as from 1.9.1967-1973, which had been spent by the applicant in circumstances hereinafter described. 5

In June 1967 the applicant applied for leave of absence abroad for the school year 1967 - 1968 for "personal and family reasons which forced him to go to the U.S.A.". Such leave was granted to him. During his leave of absence he did not enrol or attend any University course but only secured an employment as a teacher in a school. 10
Following a reminder by the Ministry of Education that his leave was due to expire on 31.8.1968 he submitted an application for extension of his leave of absence on the ground that he intended in the forthcoming academic year to study at a University. By letter dated 12.10.1968 the Director of Education informed the applicant that the Ministry has ceased to grant leave of absence and that if he wishes an educational leave he would have to submit a verification from the University that he was registered for post-graduate studies relating to education and sign a contract with a solvent guarantor that after the completion of his studies he will return to the Educational Service. The letter finally informed the applicant that if he was not ready to comply with the above two conditions he should either return to his post without further delay or submit his resignation as "the contrary will amount to unjustified absence from your duties with undesirable consequences for you". 15
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At the time when the above letter was written the practice of the Greek Communal Chamber to grant educational leave unconditionally had been discontinued and Circular 6509/54 applicable to all public officers had been extended to educationalists. The applicant accepted the above conditions. Later, however, he informed the Ministry that he could not find a guarantor and requested the Ministry to abandon the relevant condition. Otherwise, he 35
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added, he would have to submit his resignation. Finally, upon the refusal of the Ministry to accede to such request, he submitted by letter dated 20.2.1969 his resignation from the service, stating at the same time that "I express my
5 regret for the trouble. I feel obliged and much satisfied for the conduct of the Ministry towards me...".

There was never any protest on the applicant's part before submitting his resignation that any pressure was exercised on him or that the conditions imposed were un-
10 reasonable or unjustified.

The applicant, having obtained the degrees of M. A. and Ph. D., returned to Cyprus in 1973, and he was appointed to his present post on 1.9.73. On the 13.2.1974 he submitted to the respondents an application for re-examination of his claim that the period of his absence abroad for purposes of studies be considered as not
15 having interrupted his educational service. Such request was rejected by the Council of Ministers. Its decision was communicated to the applicant on 16.6.1976. By letter dated 19.10.1981 the applicant reverted to the matter and requested a new reconsideration of his case. No reply was
20 given to the applicant who repeated his request by letter dated 18.5.1982. By letter dated 23.10.1982 the applicant was informed that his request could not be accepted for the reasons stated therein*. As a result the applicant filed the present recourse.

Held, dismissing the recourse (1) If a person accepts an administrative act without protest freely and voluntarily and without reservation of rights he no longer possesses a
30 *legitimate interest entitling him to make a recourse against it in the sense of Article 146.2 of the Constitution.*

(2) The demand of the respondents that for the grant of educational leave certain conditions had to be satisfied was not arbitrary, as they implemented the provisions of Circular 6509/54 which at the time, i. e. 1968, was
35 admittedly applicable to educationalists. The non-arbitrary character of the respondent's action may also be inferred from the fact that the applicant, in submitting his resignation, expressed his appreciation for the conduct of the

* The text of this letter appears at p. 1990 post.

Ministry towards him. The applicant's resignation was free and voluntary.

(3) Therefore, the applicant does not possess a legitimate interest to proceed with the present recourse.

Held, further, that in any event this recourse is time barred. The letter of the 23.10.1982 does not contain a new decision, but is merely of an informatory character repeating the previous decision of the Council of Ministers, communicated to the applicant on 16.6.1976, and its reasoning. As such it lacks of an executory character. 5
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Recourse dismissed. No order as to costs.

Cases referred to:

- Neokleous and Others v. The Republic* (1980) 3 C.L.R. 497; 15
- Tomboli v. CYTA* (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149;
- Georghiadis v. The Republic* (1981) 3 C.L.R. 431;
- Aniliades and Others v. The Republic* (1981) 3 C.L.R. 21;
- HadjiConstantinou and Others v The Republic* (1984) 3 C.L.R. 319; 20
- Ionides v. The Republic* (1979) 3 C.L.R. 679;
- Christofides v. CYTA* (1979) 3 C.L.R. 99;
- Ioannou and Others v. The Republic* (1983) 3 C.L.R. 150;
- Perikleous v. The Republic* (1971) 3 C.L.R. 141; 25
- Constantinou v. The Republic* (1966) 3 C.L.R. 793;
- Ayoub v. The Republic* (1985) 3 C.L.R. 70.

Recourse.

Recourse against the refusal of the respondents to recognise as educational service, for the purpose of the computation of his years of service, a period of six years from 30

1.9.67 - 1973 which had been spent by applicant abroad for the purpose of post-graduate education which qualified him to the degrees of M. A. and Ph. D.

A. S. Angelides, for the applicant.

5 R. Vrahimi (Mrs.), for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicant by this recourse challenges the refusal of the respondents to recognise as educational service, for the purpose of the computation of his years of service, a period of six years as from 1.9.1967 - 1973 which had been spent by him abroad for the purpose of post-graduate education which qualified him to the degrees of M.A. and Ph.D.

The applicant is holding the post. of Inspector of Secondary Education. He was first appointed as an educationalist in the Secondary Education on 1st September, 1954 and served in such capacity till the end of the school-year 1966-1967. On 5th June, 1967 applicant applied for leave of absence for the school years 1967 - 1968 for personal reasons. By a supplementary letter dated 10th June, 1967 applicant, referring to his previous application, gave the personal reasons mentioned in his previous letter as being "family reasons which forced him to go to the U.S.A. where his brothers and mother had settled." In concluding such letter he added that during his stay there he would make efforts for enrolment in the University of Texas for studies in administration and supervision of schools. Such leave was granted to him by letter dated 22nd June, 1967 from the Ministry of Education on condition that it would be without pay.

On the 4th March, 1968 the following letter was sent to him by the Ministry of Education signed by the Head of Higher and Secondary Education.

"You are reminded that the leave of absence granted to you expires on 31.8.1968 and that immediately thereafter you have to attend for resuming your duties. Therefore, you are requested to communicate with us in writing the latest till 30th April, 1968, enclosing the attached form duly completed.

We wish to make it clear that for any renewal of your leave it is required that up to the same date you should submit an application with all necessary certificates duly reasoned and certified."

By his letter dated 15th April, 1968 applicant applied for a further leave of absence for the following school year 1968 - 1969 to enable him to study at the University of Texas where he had been accepted, informing the Ministry at the same time that the necessary certificate of his registration would be forwarded in June when such registration would be effected.

Subsequently the applicant on the 9th September, 1968, after the expiration of his leave of absence, submitted to the Ministry of Education copy of a certificate to the effect that during the school year 1967 - 1968 he was working with Allen Military Academy and also a certificate that he was registered for a summer course for the summer of 1968 with the University of Texas repeating his request for extension of his leave of absence.

By letter dated 28.9.1968 applicant forwarded a certificate from the University of Texas that he had enrolled for post-graduate studies. The applicant mentioned in the said letter, inter alia, the following:

"As you are aware I am working teaching in a very good school and I am inconvenienced, in that, the University lessons are in the afternoons or in the evenings".

The following letter dated 12th October, 1968 signed by the Director of Education was sent to the applicant:

"With reference to your letter to the Head of Higher and Secondary Education dated 9th September, 1968, I wish to inform you that leave of absence cannot be granted to you for the school year 1968 - 1969 as the Ministry has ceased to grant leave of absence for educational purposes. If you wish to have educational leave, it is required that -

- (a) you submit a verification from the University that you have registered for post-graduate studies related to education and

- (b) you sign a contract with a solvent guarantor that after the completion of your studies you will return to the Educational Service.

5 If you are not ready to comply with the above two conditions, then it will be necessary for you to return to your post without any further delay or submit your resignation as the contrary will amount to unjustified absence from your duties with undesirable consequences for you."

10 Applicant replied to the above letter on the 20th October, 1968 as follows:

15 "With reference to the subject of my educational leave, I request to be granted same as it is my strong wish to return to the Educational Service on the completion of my studies.

20 I shall, soon, submit to you a certification from the University that I have registered for post-graduate studies connected with education and I am ready to sign the contract together with a solvent guarantor that after the completion of my studies I shall revert to the Educational Service.

I warmly request the Ministry to send to me the said contract for signature and I shall make every effort to secure a guarantor."

25 There was further correspondence between the Director of Education and the applicant as follows:

On the 18th September, 1968 the following letter was sent to the applicant:

30 "I have been instructed to refer to my letter No. P.M.P. 1618 dated 15th November, 1968, in connection with the naming of a guarantor for signing the relevant contract for the educational leave granted to you for the school year 1968 - 1969 and you are requested to reply the soonest possible."

35 Applicant's reply dated 15th December, 1968 to the above letter, reads as follows:

"Irrespective of my strong desire to be granted educational leave and return to the Cyprus Education after the completion of my studies, unfortunately till today it has not become possible for me to respond to the conditions for a guarantor as set out in your letter dated 15th November, 1968, notwithstanding the efforts made by me. 5

By a previous letter sent to me by the Head of the Higher and Secondary Education, he stressed the fact that for the renewal of my study leave a certification was required from the University that I was registered for post-graduate studies which I have in fact, sent to the Ministry of Education. If this is valid, I would very much wish to be granted such a leave. If not, I am forced to submit my resignation as I have ascertained that it is very difficult to respond to the conditions concerning my educational leave contrary to my wish and effort to do so. 10 15

I hope that the Ministry of Education will take care to secure for me whatever I am entitled to, for services rendered to the Cyprus Education." 20

By letter dated 4th January, 1969, respondent was informed as follows:

"With reference to your letter dated 15th December, 1968 by which you have informed us that you cannot comply with the conditions concerning your educational leave, as set out in our letter No. PMP 1618 dated 15th November, 1968 and your request for the grant of leave of absence instead of educational leave for the year 1968 - 1969, I regret to inform you that your request cannot be acceded. 25 30

With reference to your statement that in case your request is not satisfied, you will submit resignation from your post, I wish to inform you that by such resignation you will lose all benefits and rights concerning your retirement. 35

Looking forward for your reply."

Applicant replied on the 20th February, 1969 as follows:

5 "I regret to notice that my letter dated 20th January, 1969 in reply to yours dated 4th January, 1969 has not been received. I wrote to you that in view of the fact that it could not be possible for me to secure a guarantor for the educational leave granted to me, I was bound to submit my resignation something which I do with my present letter, irrespective of the fact that by such resignation I shall lose my rights and benefits on retirement.

10 I express my regret for the trouble. I feel obliged and much satisfied from the conduct of the Ministry towards me and in particular yours. My intention still remains for educational and paedagogical reasons to submit an application for re-appointment in the Educational Service of Cyprus after the completion of my studies. I sincerely hope that I shall not lose this right as a result of the resignation I have submitted."

20 The resignation of the applicant was accepted by the Educational Service Committee and its acceptance was communicated to him by letter of its Chairman dated 13th March, 1969, the contents of which read as follows:

25 "You are hereby informed that your resignation from your post as educationalist has been accepted as from 1st September, 1968."

30 Applicant stayed in the U.S.A. where he obtained his M. A. Degree and in May, 1973, his Ph. D. Degree. Applicant returned to Cyprus in 1973 and he was appointed to his present post on the 1st September, 1973.

35 Applicant in February, 1974 raised the question of recognition of the 13 years of his previous service as educationalist as well as the six years of absence abroad prior to his resignation as part of his service with the respondents for the purpose of calculation of the years of service and on the 13th February, 1974 he submitted to the respondents through the Director of Education the following request:

"Subject: *The years of my pre-existing service.*

As emanating from the correspondence between me and the then Director-General of Education Mr. K. Georghiadis, I was forced to resign from my duties whilst in the U.S.A. for studies, thus, in the opinion of Mr. Georghiadis I lost the right that my previous years of service be considered as pensionable. 5

Due to the fact that the way by which Mr. Georghiadis faced the whole subject is, in my opinion, manifestly unjust, I warmly request that you re-examine same so that any injustice caused to me is removed and my service be treated as not having been interrupted, because I am not responsible for that, and my 13 years of service in the Cyprus Education, as well as the six years studies and teaching in public schools in the United States be recognised as pensionable years for the following reasons: 10 15

- (a) I never intended to disconnect myself from the Cyprus Education, and this, I stressed in each one of my letters to Mr. Georghiadis.
- (b) I remained always in the Education, and the years of my absence abroad were used for the teaching in public schools in the U.S.A. and for studies for the purpose of acquiring M. A. and Ph. D. in Paedagogics. 20
- (c) Whereas I was asked by Mr. Vrahas to provide a certificate of my registration with the University for the renewal of my leave of absence, which in fact I did, Mr. Georghiadis intervened and created for me an insolvable problem which, notwithstanding my efforts I was unable to solve, as I was abroad. 25 30
- (d) Whilst Mr. Georghiadis was refusing my leave of absence, such leave was granted at about the same time to others whose years of studies were taken into consideration not only for the purposes of increments and promotion but also for the purposes of education. 35
- (e) I believe that I should not be considered as responsible for the interruption of my services."

The request was examined after the opinion of the Attorney-General of the Republic was obtained on the matter. As a result, a submission was made by the Ministry of Education to the Council of Ministers setting out the facts of the case, the opinion of the Attorney-General together with a recommendation of the Ministry for recognition of the previous service of the applicant in respect of the years 1954 - 1967, during which he had served as educationalist, as well as for the years 1967 - 1973, the period of his absence in the U.S.A. The matter was considered by the Council of Ministers which rejected applicant's request. The decision of the Council of Ministers was communicated to the applicant by the Ministry of Finance by letter dated 16th June, 1976, signed by the Head of the Personnel Department, the contents of which read as follows:

"I have been instructed to refer to your letter dated 13th February, 1974 addressed to the Ministry of Education, whereby you were applying for recognition for pension purposes, of the period of your service as from the 1st September, 1954 till the 31st August, 1967 and to inform you that your request has been considered by the Council of Ministers which has decided that your request be rejected, as the interruption of your services between 1.1.68 and 31.8.73, when you were appointed in the post of Inspector of Secondary Education, was due to your resignation and, therefore, it cannot be treated as not interrupting, the continuation of your service under the proviso to section 7(1) of the Educationalist Pension Law, No. 56/67".

As a result of the enactment of the Educationalist Pension (Amendment) Law, 1981, (Law 40/81), the previous years of service of the applicant for the period as from 1954-1967 during which he had served as an educationalist were recognised as pre-existing service.

In 1981 the applicant reverted to his claim for recognition of the period 1967 - 1973, as part of his service and raised the matter by his letter dated 19th October, 1981 addressed to the Acting Director-General of the Ministry of Education, in which, after making reference to the opinions expressed by the Attorney-General of the Republic and

the Deputy Attorney-General in 1974 and 1975, when the matter was referred to the Council of Ministers and also by making reference to other cases in which periods of educational leave abroad was treated as not amounting to an interruption of service, he requested for a favourable consideration of his case. No reply was sent to the said letter and by another letter dated 18th May, 1982 directed to the Minister of Education he repeated his request, enclosing also copy of his letter of the 19th October, 1981. On 23rd October, 1982 a reply was sent to applicant whereby he was informed that his request could not be accepted for the following reasons as stated therein:

“(a) With the submission of your resignation from the post of a teacher which you were holding and which was accepted on 1.9.1968, you ceased to have the position of a servant in the public educational service and, therefore, you were not under the jurisdiction of the Ministry of Education during the said period.

(b) Your application that you were forced to retire is unjustified. The then Director of Education acted within the scope of the Regulations and the terms subject to which scholarships and educational leave were granted and the claim for a solvent guarantor was proper in all respects.

(c) Your letter dated 20th February, 1969 whereby you submitted your resignation does not disclose anywhere that your resignation was not the result of your own free will.

(d) Revocation of your resignation after the lapse of 14 years cannot be legally permissible.

2. With reference to the interruption which appears in your service it should be noted that after the enactment of Law 40/81 this is bridged and as a result the previous claim of yours has been satisfied in this respect.”

As a result, applicant filed the present recourse, whereby he prays for:

(a) A declaration that the act and/or decision of the respondents communicated to the applicant on 23.10.1982 and by which they did not recognise as educational service of the applicant the period 1.9.1967 till 31.8.1973, is null and void and of no legal effect.

(b) A declaration of the Court that the refusal and/or omission of respondent 1 to satisfy the claim of the applicant is null and void and of no legal effect.

The legal grounds set out in the application in support of applicant's claim are the following:

1. The sub judge decision is legally unfounded as the principles of equal treatment and protection have not been applied.

2. The sub judge decision was taken without due inquiry.

3. The sub judge decision was taken under a procedure which is legally wrong as it is based on facts which should not have been taken into consideration and/or facts which should have been taken into consideration have not been so taken, and/or the action of the respondents is beyond their jurisdiction.

4. The decision was taken in abuse and/or excess of power and in violation of the case law.

5. The decision is violating vested rights of the applicant and the principles of natural justice as it is intended to serve other unlawful objects.

6. The sub judge decision is wrong due to misconception of facts and/or law.

7. It is not duly reasoned.

8. The sub judge decision embodies the element of a continuous tendency of punishing the applicant.

By his opposition counsel for respondents raised a preliminary objection that the sub judge decision is out of time and that the decision and/or refusal of respondent 1 dated 23rd October, 1982 in connection with the letter of

the applicant dated 19.10.1981, is confirmatory of a previous decision and/or of a refusal which followed the letter of the applicant dated 9.9.1968. Without prejudice to the above, it is the contention of the respondents that they acted lawfully and in the proper exercise of their discretionary powers after having examined all the material facts of the case and after having given due reasoning. 5

Counsel for applicant in his written address expounded on the grounds of law set out in support of his application. He submitted that the applicant was granted leave of absence abroad for educational purposes for the years 1967 - 1968 and that when he applied for the renewal of such leave, certain conditions were imposed for the extension of same, one of which was the securing of a solvent guarantor, a condition legally unfounded, and which the applicant could not satisfy due to the fact that he was abroad. The imposition of such condition, counsel added, was contrary to the practice followed by the Greek Communal Chamber before its dissolution and the transfer of its functions to the Ministry of Education. The practice of the Communal Chamber was to grant educational leave abroad with or without emoluments and such practice continued to be followed by the Ministry of Education till 1968 when the provisions applicable to all civil servants were extended also to educationalists. Once, counsel submitted, applicant was granted educational leave for the year 1967 - 1968, such condition could not be imposed on him as he was already on educational leave. The imposition of such condition in the circumstances of the present case, amounts to unequal treatment of the applicant compared to other educationalists and persistence to such demand left no alternative to the applicant but to submit his resignation. Counsel contended that the resignation of the applicant was not free and voluntary as his inability to comply with an unreasonable condition imposed on him forced him to submit his resignation. Counsel further added that the fact that his resignation could not be treated as voluntary is supported by the opinions expressed by the Attorney-General in October, 1974 and by the Deputy Attorney-General in 1975 which were submitted to the Council of Ministers together with the submission of the Ministry of Education recommending the recognition of the years of absence abroad of 10
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the applicant as pre-existing service for pension purposes.

In dealing with the preliminary objection of counsel for respondents that the recourse is out of time counsel for applicant contended that in view of the enactment of law
5 40/81 applicant's request should be re-examined by the respondents and their failure to carry out a new inquiry gave the right to applicant to file a recourse against such failure.

Counsel for respondents adopted in his address the
10 grounds raised by his opposition. He laid stress to the fact that the leave granted to the applicant in 1967 was for personal and family reasons and not for educational reasons. Counsel maintained that in response to the application of the applicant for educational leave, the respondents
15 brought to his notice the conditions under which such leave could be granted under Circular No. 71 M. P. 6509/54 the application of which was extended to educationalists in the same manner as in the case of civil servants. The applicant did not raise any objection to the conditions im-
20 posed nor did he challenge the imposition of such conditions. Counsel further maintained that the acceptance of the conditions has deprived the applicant of any legitimate right to challenge them. Counsel finally submitted that the resignation of the applicant was free and voluntary and
25 that no pressure was exercised upon him to resign.

Bearing in mind, however the contention that the resignation of the applicant was due to pressure and not the result of the exercise of his free will and also that the imposition of the conditions was arbitrary, once the appli-
30 cant was already on education leave, I shall proceed to consider these issues as I feel that such matters are interwoven with the preliminary objections raised.

Counsel for applicant in support of his argument sought to rely, inter alia, on the opinion expressed both by the
35 Attorney-General and his Deputy and also on the contents of the submission of the Ministry of Education, to the Council of Ministers.

The opinion of the Attorney-General (Annex A to the written address of counsel for applicant) sets out the principles under which a resignation may be considered as sub-
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mitted under circumstances of force or pressure which may render the acceptance of same as not amounting to a formal retirement. Such opinion, however, was expressed under the following reservation which appears in paragraph 2 of same: "All the facts of the present case have not been placed before me and, therefore, I cannot express an opinion on the case in the way it is submitted to me." 5

Concerning the opinion of the Deputy Attorney-General contained in a letter addressed to the Minister of Finance (Annex 13 to the written address of counsel for applicant) dated 13.3.1975, such opinion is based on the assumption as it emanates from sub-para. (b) of the last paragraph of the first page that "the claim for the signing of contract with a guarantor was made *at a time when Mr. Christodoulides was already in U.S.A. for post-graduate studies on scholarship* which by the way were related with his career in the public service and it would have been very difficult for him to abandon his studies due to the advanced stage of same." 10 15

And also under sub-paragraph (c) of the same paragraph that: 20

"The possibility of such claim in connection with the grant to him of the relevant educational leave without pay was not valid as *it was not made known to him before his decision to accept the said scholarship.*" 25

Notwithstanding the fact that the opinion of the Attorney-General or his Deputy are not binding on this Court which is bound to consider a case judicially on the material before it, it is clear from their contents that they were based on wrong assumption of facts or that the facts of the case were not properly or at all put before them. The question which poses for consideration is: "Was the applicant at the material time when the claim for the signing of a bond with a guarantor was asked from him, on educational leave of absence or on scholarship? If the answer to such question is in the affirmative, I would have no hesitation in finding that a condition could not be imposed in the middle of educational leave already granted to the applicant the inability of performance of which would have been to deprive the applicant of the continuation of studies in respect of 30 35 40

which he had already been granted educational leave.

To answer the above question I have to revert to the facts of the case as emerging from the material before me which I shall summarise.

5 In June, 1967 the applicant applied for leave of absence
abroad for the school year 1967 - 1968 for "personal and
family reasons which forced him to go to the U.S.A.". Such
leave was granted to him. During his leave of absence and
his stay in the U.S.A. he did not enrol or attend any
10 University course but only secured an employment as a
teacher in a school. Following a reminder from the Ministry
of Education that his leave expired on 31.8.1968 he
submitted an application for extension of his leave of ab-
sence on the ground that he intended in the forthcoming
15 academic year to study at a University. It was then that for
the first time he applied for educational leave abroad. In re-
ply to such letter he was informed that for the grant of leave
of absence for educational purposes certain conditions had to
be satisfied which were made known to him, as the Mini-
20 stry of Education had ceased to grant leave of absence for
educational purposes and in cases when such leave might
be granted, it could only be granted subject to the condi-
tions set out therein, which were required under Circular
No. 71 M.P. 6509/54. The practice of granting educational
25 leave unconditionally which was previously followed by the
Greek Communal Chamber was continued by the Ministry
of Education till 1968 when it was discontinued and the
conditions applicable to all public officers as embodied in
the Circular 6509/54 to which reference is made in the
30 letter of the Ministry of Finance dated 10th April, 1964,
addressed to all Government Departments (Annex 14 to the
written address of counsel for respondents) were extended
to educationalists.

Applicant by his letter dated 10th October, 1968, re-
35 ference to which has already been made communicated his
unconditional acceptance of the conditions requesting at
the same time that the necessary contract be sent to him
for signature. Later by his letter dated 15th December,
1968 the applicant informed the respondents that he could
40 not secure a guarantor and requested the grant of educa-
tional leave without compliance with the said conditions or

otherwise he had to submit his resignation which in fact he did by his letter dated 20th February, 1969, notwithstanding the warning of the respondents that by resigning he might lose his rights to retirement benefits. It is worthwhile to repeat the last paragraph of his said letter which shows how the attitude of the respondents towards the applicant was assessed by the latter: 5

“I express my regret for the trouble. I feel obliged and much satisfied for the conduct of the Ministry towards me in particular yours....”. 10

There was never any protest on his part before submitting his resignation that any pressure was exercised on him or that the conditions imposed were unreasonable or unjustified, but, on the contrary, his response was that of an expression of satisfaction and appreciation of the attitude of the Ministry towards him. 15

It has been repeatedly pronounced by this Court that if a person accepts an administrative act or decision without protest, he no longer possesses a legitimate interest entitling him to make a recourse against it in the sense of Article 146.2 of the Constitution. (See, inter alia, *Neokleous and others v. The Republic* (1980) 3 C.L.R. 497, *Tomboli v. CYTA* (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149, *Georghiades v. The Republic* (1981) 3 C.L.R. 431, *Aniliades and Others v. The Republic* (1981) 3 C.L.R. 21 and *HadjiConstantinou and Others v. The Republic* (1984) 3 C.L.R. 319). 20 25

It is also well settled that an acceptance of an administrative act or decision with reservation of rights does not deprive the acceptor of his legitimate interest (see *Ionides v. The Republic* (1979) 3 C.L.R. 679, *Christofides v. CYTA* (1979) 3 C.L.R. 99, *Ioannou and others v. The Republic* (1983) 3 C.L.R. 150). 30

For an acceptance, however, to amount to a deprivation of a legitimate interest, it must be free or voluntary. (*Perikleous v. The Republic* (1971) 3 C.L.R. 141, *Constantinou v. The Republic* (1966) 3 C.L.R. 793, *Ayoub v. Republic* (1985) 3 C.L.R. 70 at pp. 75, 76). 35

Bearing in mind the above principles, I am coming to

consider whether in the circumstances of the present case applicant's resignation was free and voluntary.

I have already dealt with the facts of the case explicitly and I do not consider it necessary to repeat them once
5 again. The demand of the respondents that for the grant of educational leave certain conditions had to be satisfied, was not an arbitrary one, as the respondents implemented the provisions of a circular which at the material time,
10 that is, the educational year 1968, was admittedly applicable not only to civil servants but to educationalists as well. The fact that the respondents did not act arbitrarily in the case, may also be inferred from the letter of the applicant, when submitting his resignation whereby he expressed his appreciation for the conduct of the Ministry of
15 Education towards him. Bearing in mind all the circumstances of the present case, I have not been satisfied that the resignation of the applicant was not free and voluntary.

Having reached such conclusion, I find that the acceptance
20 by him of his termination of services after the submission of his resignation to the appropriate authority, without any protest or reservation of rights has deprived him of any legitimate interest to challenge such termination of his services.

Notwithstanding the fact that my finding as above renders
25 the recourse of the applicant unsuccessful, there is one more reason why this recourse should fail, that of time bar, for the following reasons:

The applicant by letter dated 13th February, 1974 submitted to the respondents a request for re-examination of
30 his claim that the period of his absence abroad for purposes of studies be considered as not having interrupted his educational service which as it emanates from his letter had been turned down by Mr. K. Georghiadis, the Director-General. In his said letter he explicitly set out all material
35 facts in support of his claim.

Such request was rejected by the Council of Ministers and its decision on the matter was communicated to him on the 16th June, 1976. The applicants did not challenge such decision within the period of 75 days fixed by the Consti-

tution. He reverted to the matter, again, five years later (in 1981), when by his letter dated 19th October, 1981, requested for a new reconsideration of his case. No reply was given to such letter and applicant repeated his request by letter dated 18th May, 1982, to which a reply was sent on the 23rd October, 1982 that his request could not be acceded for the reasons stated therein. 5

In the light of all the material before me I find that the letter of the 23rd October, 1982 does not contain a new decision on the matter but is merely of an informatory character repeating the previous decision of the Council of Ministers and the reasoning of such decision which was communicated to the applicant on the 16th June, 1976, and as such it lacks of an executory character. Therefore, applicant's recourse has been filed out of time. 10 15

In the result, this recourse fails. In the circumstances there will be no order for costs.

*Recourse dismissed.
No order as to costs.*