1980 March 21

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS HADJICONSTANTINOU AND OTHERS,
Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,
Respondent.

(*Cases Nos.* 337/74, 346/74 *and* 331/74).

Public Officers—Additional increments—Emplacement increments—Within discretion of Minister of Finance by virtue of Decision 5361 *of the Council of Ministers—And are payable only "upon their appointment in the service"—Temporary Fire Servicemen—Appointed to the permanent establishment—Claim for emplacement increments submitted about* 2 *to* 12 *years after such appointment—Such claim amounting to a claim for additional increments—Which could not be satisfied in view of the bar placed to payment of additional increments by Decision* 3697 *of the Council of Ministers—Nor could emplacement increments be granted because such increments are payable in the Minister's discretion only "upon their appointment" in the service.*

Legitimate interest—Article 146.2 *of the Constitution—Free and without any reservation acceptance of an administrative act—Whether it deprives the acceptor of the legitimate interest to make an administrative recourse.*

All the applicants were, prior to their appointment to the permanent establishment, engaged as casual Firemen. The dates of their appointment on a temporary basis ranged from 1956 to March, 1971 and the dates of their appointment to the permanent establishment ranged from December, 1961 to April, 1972. As from 1969 the salary of the temporary post was either

£552 or £558 per annum and that of the permanent post £510x18–582x24–750. On their appointment to the permanent establishment they were put on the starting point of the salary scale with the result that their salary was by about £5 per month lower than what they were getting whilst employed on a casual basis, but none of them complained about this nor did they make any reservation when accepting the offer for appointment.

On the 22nd March, 1973, one Andreas Eraklides, who was until then serving as a Fire Serviceman on a temporary basis, was appointed to the permanent establishment. He accepted the offer for appointment without any reservation and like all others, he was put on the lower point of the scale. When he noticed, however, after receiving his first monthly salary in the established post, that this resulted in the reduction of his salary he wrote to the Chief Fire Service Officer on the 12th May, 1973 requesting that his salary would be brought in line with what he was getting whilst serving on a temporary basis. His request was eventually placed before the Ministry of Finance which, by letter dated the 13th July, 1973, informed the Chief of Police that it had been approved that Mr. Eraklides be put on the point of £546 of salary scale Γ1 as from the date of his appointment to the permanent establishment (22.3.1973).

In consequence of the above the Chief of Police by a letter dated August 16, 1973, forwarded to the Ministry of Finance a list with the names of 125 Fire Servicemen who had served on a casual basis and had been appointed to the permanent establishment on various dates from 1st December 1961 to the 1st July, 1973.

The Ministry of Finance replied, by letter dated April 17, 1974, that it approved the emplacement of 39 Fire Servicemen, who were placed on the permanent establishment on or after the 22nd March, 1973, on the point of £546 of salary scale Γ1; and that with regard to those who had been appointed prior to the 22nd March, 1973 the above concession would not be extended to them because it was a concession which was raised and examined for the first time on the 22nd March, 1973 and was extended to the personnel of the Fire Service as from such date.

Following the above the applicants, who had all been appointed to the permanent establishment prior to the 22nd

March, 1973, wrote to the Ministry of Finance requesting that they may be treated in the same way as their colleagues. The Ministry rejected their request, by letter dated 5th June, 1974, on the ground that the granting of additional increments to temporary Fire Servicemen upon their appointment on a permanent basis was raised, examined and approved on the 22nd March, 1973 and none of the applicants raised such an issue when accepting his appointment; and on the ground that the granting of additional increments to serving Fire Servicemen and to public officers in general was contrary to Decision No. 3697* ("Decision 3697") of the Council of Ministers dated 27.2.1964. Hence these recourses which were based mainly on the ground that the *sub judice* decision discriminated against the applicants, contrary to Article 28 of the Constitution, and on the grounds of defective exercise of discretionary powers and absence of due reasoning.

Decision No. 5361 of the Council of Ministers dated the 3rd February, 1966 ("Decision 5361") reads as follows:

> "Although the Council of Ministers considers that the Minister of Finance has already the power referred to in the submission**, yet in order to dissolve every doubt, it has decided to delegate to the Minister of Finance the powers vested in it with regard to the placing of certain officers upon their appointment in the service at any point beyond the lowest point of the approved salary scale of their post".

Counsel for the respondent raised a preliminary point to the effect that the applicants had no legitimate interest in the sense of Article 146.2 of the Constitution.

Held, (1) (*on the question whether applicants had a legitimate interest*) that the free and without any reservation acceptance of an administrative act or decision deprives someone from the right to challenge it by an administrative recourse (see

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* Decision 3697 reads as follows:

"3697 32. The Council decided that in view of the present situation:-

(a) no acting allowances should be paid in accordance with the relevant General Orders; and

(b) no applications for additional increments should be entertained.

The matter will be reviewed when the situation improves".

** The submission is quoted at p. 196–97 *post*.

Myrianthis v. *The Republic* (1977) 3 C.L.R. 165); that although the decision in the *Myrianthis* case seems to support the view that the applicants in the present cases may, in fact, not possess a legitimate interest to pursue the present recourses yet, in view of the different and peculiar circumstances of the cases in hand, this Court has eventually decided to consider the matter as doubtful and to determine this issue in their favour (*Piperis* v. *Republic* (1967) 3 C.L.R. 295 *distinguished*).

(2) That though one may reasonably assume that Decision 5361 is applicable both to public officers and other persons in the Government Service under this decision the discretion of the Minister of Finance is certainly limited to the grant of emplacement increments to officers first entering the service and, at the most, to officers first appointed to the permanent establishment but in either case "upon their appointment"; and that it is in the exercise of his discretionary powers under this decision that the Minister granted the two emplacement increments to Eraklides and those other Fire Servicemen who were placed on the permanent establishment on or after the 22nd March, 1973.

(3) That the remedy sought by the applicants in these cases, on the face of it, is to be put on the same step of the salary scale i.e. £546 as from the dates of their respective appointments to the permanent establishment in the same way that Eraklides and the other 39 Fire Servicemen were; that when they raised this matter with the Minister the time that had elapsed from such dates was a period of between about two and twelve years; that in substance, therefore, what they were claiming was additional increments; that the Minister could only satisfy their claim by granting additional increments to them; that this he had no power to do in view of the bar placed to the payment of additional increments as from the 27th February, 1964, by Decision 3697 of the Council of Ministers; that, therefore, at the relevant time neither emplacement increments could be paid to the applicants under Decision 5361 because such increments are payable in the Minister's discretion only "upon their appointment" in the service and, very likely, in the permanent establishment, nor additional increments because of the bar in Decision 3697; that as the Respondent Minister had no discretion nor, indeed, power to entertain applicants' claim these recourses

cannot succeed on any of tne grounds raised; and that, accordingly, they must be dismissed.

Applications dismissed.

Per curiam:

Even if it could be conceivably argued—and no such allegation was made—that the decision of the Minister in granting emplacement increments to Eraklides and the others was erroneous and illegal on the ground that they were not first entrants in the service in the strict sense, the applicants in these cases would not be in any better position because this would not entitle them to the same error or illegality nor would it create an obligation on the Minister to repeat it. (See Conclusions from the Case Law of the Greek Council of State (1929-1959) p. 158 and *Voyiazianos* v. *The Republic* (1967) 3 C.L.R. 239).

Cases referred to:

Piperis v. *Republic* (1967) 3 C.L.R. 295;

Savvides v. *Republic* (1975) 3 C.L.R. 48;

Myrianthis v. *The Republic* (1977) 6 J.S.C. 841 (to be reported in (1977) 3 C.L.R. 165);

Shamassian and Others v. *Republic* (1973) 3 C.L.R. 341;

Voyiazianos v. *Republic* (1967) 3 C.L.R. 239.

Recourses.

Recourses against the decision of the respondent to put applicants on the point of £546.—of salary scale Γ1 £510x18--582x24-750 as from the date of their appointment to the permanent post of Five Servicemen.

A. Dikigoropoulos, for applicants in Case No. 337/74.

S. Spyridakis, for applicants in Case No. 346/74.

A. Xenophontos, for applicants in Case No. 331/74.

A. Evangelou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

L. Loizou J. read the following judgment. By these consolidated recourses the applicants seek a declaration that the decision and/or act of the respondents not to put them on the point of £546 of salary scale Γ1 £510x18-582x24-750 as from the

date of their appointment to the permanent post of Fire Servicemen on the ground that they were so appointed before the 22nd March, 1973, having granted these benefits to certain other Fire Servicemen who were appointed after that date, is contrary to the Constitution and/or the law and/or is in excess or abuse of powers.

The facts of these cases, in so far as they are relevant for the purposes of these recourses, are as follows:

All the applicants were prior to their appointment to the permanent es ablishement engaged as casual Firemen. The dates of their appointment on a temporary basis range from 1956 to March. 1971 and the dates of their appointment to the permanent establishment range from December, 1961 to April, 1972. The salary of the temporary post and that of the permanent post during the years 1957–1973 appear in an annex to *exhibit* 6. As from 1969 the salary of the temporary post was either £552 or £558 per annum and that of the permanent post £510x18–582x24–750. On their appointment to the permanent establishment they were put on the starting point of the salary scale with the result that their salary was by about £5 per month lower than what they were getting whilst employed on a casual basis, but none of them complained about this nor did they make any reservation when accepting the offer for appointment.

On the 22nd March. 1973, one Andreas Eraklides, who was until then serving as a Fire Serviceman on a temporary basis was appointed to the permanent establishment. He accepted the offer for appointment without any reservation and like all others, he was put on the lower point of the scale. When he noticed, however, after receiving his first monthly salary in the established post, that this resulted in the reduction of his salary he addressed a letter dated 12th May, 1973, *exhibit* 1, to the Chief Fire Service Officer complaining about the matter and requesting that the necessary steps be taken so that his salary would be brought in line with what he was getting whilst serving on a temporary basis. He was orally advised by the Chief Fire Service Officer to apply to the Chief of Police and this he did through the Chief Fire Service Officer by his letter dated 21/5/73, *exhibit* 2. Eventually, the Chief of Police under cover of a letter dated 26/5/73, *exhibit* 4, remitted the request to the Director–General of the Ministry of Finance. On the 13th

July, 1973, the Ministry of Finance replied to the Chief of Police by the letter *exhibit* 5 informing him that it had been approved that Mr. Eraklides be put on the point of £546 of salary scale Γ1 £510x18–582x24–750 as from the date of his appointment to the permanent establishment (22/3/73).

In consequence of the above the Chief Fire Service Officer addressed a letter to the Chief of Police dated 6th August, 1973, together with a list of all Fire Servicemen affected by the decision of the Ministry of Finance. The list contained the names of some 125 Fire Servicemen who had served on a casual basis and had been appointed to the permanent establishment on various dates from 1st December, 1961 to the 1st July, 1973. The Chief of Police by a letter dated 16th August, 1973, *exhibit* 6, forwarded the letter to the Director–General of the Ministry of Finance for any necessary action. On the 17th April, 1974, the Director–General of the Ministry of Finance addressed the following reply to the Chief of Police, *exhibit* 7:

"'Ενετάλην ὅπως ἀναφερθῶ εἰς τὴν ἐπιστολὴν σας ὑπ' ἀριθμὸν 156 καὶ ἡμερομηνίαν 16ην Αὐγούστου 1973 ἐν σχέσει πρὸς τὴν μισθοδοσίαν ἀριθμοῦ προσωρινῶν Πυροσβεστῶν οἱ ὁποῖοι διωρίσθησαν εἰς τὴν μόνιμον θέσιν Πυροσβέστου κατὰ διαφόρους ἡμερομηνίας ἀπὸ τοῦ 1962 καὶ σᾶς πληροφορήσω ὅτι ἐνεκρίθη ὅπως τὰ κάτωθι πρόσωπα τοποθετηθῶσιν ἐπὶ τῆς βαθμίδος τῶν £546 τῆς κλίμακος Γ1–£510×18––582×24–750 ἀπὸ τῆς ἡμερομηνίας τοῦ διορισμοῦ των εἰς τὴν ὡς ἄνω θέσιν (νοουμένου ὅτι εὑρίσκονται νῦν ἐν ὑπηρεσία)–

[illegible]

Αἱ λεπτομέρειαι ὡς ἀνωτέρω ἀντεγράφησαν ἐκ τοῦ καταλόγου τὸν ὁποῖον ἡτοίμασεν ὁ Διευθυντὴς τῆς Πυροσβεστικῆς 'Υπηρεσίας δέον ὅπως ἐπαληθευθῶσι προτοῦ γίνῃ ἡ ἀναπροσαρμογή.

2. "Οσον ἀφορᾶ τοὺς διορισθέντας πρὸ τῆς 22.3.1973 τὸ 'Υπουργεῖον τοῦτο λυπεῖται διότι δὲν δύναται νὰ ἐπεκτείνῃ τὴν παροῦσαν παραχώρησιν. Πρόκειται περὶ παραχωρήσεως ἡ ὁποία ἀφοῦ ἠγέρθη καὶ ἐξητάσθη τὸ πρῶτον τὴν 22.3.73 ἐπεξετάθη ἀπὸ τῆς ὡς ἄνω ἡμερομηνίας εἰς τὸ προσωπικὸν τῆς Πυροσβεστικῆς 'Υπηρεσίας."

("I have been directed to refer to your letter No. 156 dated 16th August, 1973 in connection with the salary of a number of temporary Firemen who have been appointed to the permanent post of Fireman on various dates as from 1962 and to inform you that it has been approved that the following persons be placed on point £546 of the salary scale Γ1—£510x18–582x24–750 as from the date of their appointment (provided they are still in the service)—

.....

.....

.....

The above details have been copied from the list which has been prepared by the Chief Superintendent of the Fire Service and must be verified before the readjustment takes place.

2. As regards those appointed prior to 22.3.1973 this Ministry regrets for not being able to extend the present concession. This is a concession which having been raised and discussed for the first time on 22.3.73, it was extended as from the above date to the personnel of the Fire Service.").

The list in the above *exhibit* contains the names of 39 Fire Servicemen all of whom were placed on the permanent establishment on or after the 22/3/73.

On the 9th May, 1974, counsel appearing for applicants in case No. 337/74 wrote on behalf of his clients to the Director-General of the Ministry of Finance the letter *exhibit* 8 informing him that the contents of his letter of the 17th April, 1974 addressed to the Chief of Police was communicated to his clients by the Chief Fire Service Officer on the 26th April, 1974, and pointed out to him that:

The decision to readjust the salaries of the Fire Servicemen mentioned in the Director-General's letter, *exhibit* 7, with the only criterion the date of their appointment to the permanent establishment is contrary to the provisions of the laws and the Constitution in that—

(a) It discriminates against his clients contrary to Article 28 of the Constitution.

(b) It is contrary to Article 7 of the International Covenant on Economic, Social and Cultural Rights ratified by Law 14 of 1969.

(c) It amounts to unjustified promotion of Fire Servicemen appointed to the permanent establishment as from the 22/3/73 above Fire Servicemen appointed to the same post before that date.

Finally counsel states that his clients request that they may be treated in the same way as their colleagues who have benefited from his decision.

On the 13th May, 1974, counsel appearing for applicants in Case No. 346/74 addressed two identical letters to the Ministry of Finance requesting that his two clients be put on salary scale Γ1 £510x18–582x24–750 on which, according to their information, their colleagues had been put and that by not putting his clients on the same salary scale cannot be considered consistent with Article 28 of the Constitution.

Finally on the 20th May, 1974, counsel appearing for applicants in Case No. 331/74 addressed a letter on their behalf to the Director-General, Ministry of Finance, complaining that the decision to emplace some of their colleagues on the point of £546 of the scale Γ1 as from the date of their appointment to the permanent establishment puts Fire Servicemen, like his clients who were appointed to the permanent establishment earlier, in a disadvantageous position and requesting that the matter be considered and that steps should be taken with a view to rectifying the injustice.

The Director-General of the Ministry of Finance replied to the three letters by identical letters dated 5th June, 1974, *exhibits* 9, 13 and 15 respectively. *Exhibit* 9 reads:

" 'Ενετάλην ὅπως ἀναφερθῶ εἰς τὴν ἐπιστολὴν σας ὑπὸ ἡμερομηνίαν 9ην Μαϊου, 1974, ἐν σχέσει πρὸς αἴτημα ἀριθμοῦ Πυροσβεστῶν διὰ τὴν παραχώρησιν εἰς αὐτοὺς προσαυξήσεων, καὶ σᾶς πληροφορήσω μετὰ λύπης μου ὅτι τὸ αἴτημα τῶν ἐν λόγῳ Πυροσβεστῶν δὲν κατέστη δυνατὸν νὰ ἐγκριθῆ. 'Η παραχώρησις προσαυξήσεων εἰς ἐκτάκτους Πυροσβέστας ἐπὶ τῷ διορισμῷ αὐτῶν ἐπὶ μονίμου βάσεως ἠγέρθη, ἐξητάσθη καὶ ἐνεκρίθη τὸ πρῶτον τὴν 22/3/73 οὐδεὶς δὲ ἐκ τῶν πελατῶν

σας ἤγειρε τοιοῦτο θέμα κατὰ τὸν χρόνον τῆς ἀποδοχῆς τοῦ διορισμοῦ του.

2. Ἐξ ἄλλου ἡ παραχώρησις προσθέτων προσαυξήσεων εἰς ὑπηρετοῦντας Πυροσβέστας καὶ γενικῶς εἰς δημοσίους ὑπαλλήλους ἀντίκειται πρὸς τὴν ἀπόφασιν τοῦ Ὑπουργικοῦ Συμβουλίου ὑπ' ἀριθμὸν 3697, ἡμερ. 27.2.64. Διὰ τῆς ἐν λόγῳ ἀποφάσεως ἐτερματίσθη ἡ τακτικὴ τῆς παραχωρήσεως προσθέτων προσαυξήσεων."

("I have been directed to refer to your letter dated 9th May, 1974, in connection with the request of a number of Firemen for the granting to them increments, and to inform you with regret that the request of the said Firemen could not be approved. The granting of increments to casual Firemen on their appointment on a permanent basis was raised, considered and approved for the first time on 22.3.73 and none of your clients raised such a question at the time of the acceptance of his appointment.

2. Besides, the granting of additional increments to serving Firemen and generally to public officers is contrary to decision of the Council of Ministers No. 3697 dated 27.2.64. By the said decision the practice of granting additional increments has been terminated.").

As a result of the refusal these three recourses were filed. They are based on a variety of grounds of law but a common ground is that the decision complained of discriminates against the applicants contrary to Article 28 of the Constitution. The other grounds of law relate to due reasoning, defective exercise of discretionary powers, excess or abuse of powers and that the decision is contrary to Article 7 of the International Covenant on Economic, Social and Cultural Rights.

Learned counsel for the respondent at the commencement of his address raised a preliminary point to the effect that the applicants had no legitimate interest in the sense of Article 146.2 of the Constitution to pursue these recourses on the ground that they had accepted the offers for their appointments in which the salary scale of the post was clearly shown without any reservation and that although most of them had been appointed to the permanent establishment a long time ago as it appears from table 'A' attached to *exhibit* 6 and were receiving their salaries

continuously, they never protested or raised the issue of receiving additional increments.

In support of his argument on this preliminary point learned counsel cited the case of *Piperis* v. *The Republic* (1967) 3 C.L.R. 295, but acting very fairly he also brought to the notice of the Court the more recent case of *Savvides* v. *The Republic* (1975) 3 C.L.R. 48 in which he raised the point of legitimate interest and it was eventually decided against him.

With all respect to counsel it is quite clear to me that the *Piperis* case (*supra*) is clearly distinguishable from the present case. In that case what the applicant was claiming was additional increments above the top of the salary scale which was fixed by law and it was applicable to the post to which he had been promoted having accepted the offer for promotion without any reservation. The decision, therefore, in the Piperis case can have no application to the cases in hand. A case more to the point that the free and without any reservation acceptance of an administrative act or decision deprives someone from the right to challenge it by an administrative recourse is the case of *Myrianthis* v. *The Repbulic* (1977)* 6 J.S.C. 841. And although the decision in that case seems to support the view that the applicants in the present cases may, in fact, not possess a legitimate interest to pursue the present recourses yet, in view of the different and peculiar circumstances of the cases in hand, I have eventually decided to consider the matter as doubtful and to determine this issue in their favour.

Before going to the merits I consider it pertinent to refer to two other *exhibits* produced in the course of the hearing which relate to the grant of increments. The first (*exhibit* 10) is decision No. 3697 of the Council of Ministers taken on the 27th Feburary, 1964. It reads as follows:

"*Acting allowances and additional increments*

(Submission No. 87/64).

Decision No.

3697 32. The Council decided that, in view of the present situation:-

(a) no acting allowances should be paid in accordance with the relevant General Orders; and

* To be reported in (1977) 3 C.L.R. 165.

(b) no applications for additional increments should be entertained.

The matter will be reviewed when the situation improves."

The second, *exhibit* 11, is decision No. 5361 of the Council of Ministers taken on the 3/2/66. It reads as follows:

"Παροχαὶ προσαυξήσεων ἐκτὸς τῶν κανονικῶν ἐτησίων τοιούτων.

(Πρότασις ὑπ' Ἀρ. 77/66).

15. Ἡ Ὑπουργὸς Δικαιοσύνης ἐξέφρασε τὴν γνώμην ὅτι ὁ Ὑπουργὸς Οἰκονομικῶν ἤδη κέκτηται δυνάμει τῆς Γενικῆς Διατάξεως III/1.2(c), τὴν ἐξουσίαν τὴν ἀναφερομένην εἰς τὴν Πρότασιν καὶ ὅτι τοῦτο τῆς ἐπιβεβαίωσε προφορικῶς ὁ Γενικὸς Εἰσαγγελεὺς τῆς Δημοκρατίας.

Ἀπόφασις ὑπ' Ἀρ. 5361

16. Τὸ Συμβούλιον καίτοι θεωρεῖ ὅτι ὁ Ὑπουργὸς Οἰκονομικῶν ἤδη κέκτηται τὴν ἐξουσίαν τὴν ἀναφερομένην εἰς τὴν Πρότασιν, ἐν τούτοις πρὸς διάλυσιν πάσης ἀμφιβολίας ἀπεφάσισεν ὅπως ἐκχωρήση εἰς τὸν Ὑπουργὸν Οἰκονομικῶν τὰς ἐξουσίας τὰς ὁποίας κέκτηται ὅσον ἀφορᾷ τὴν τοποθέτησιν ὡρισμένων ὑπαλλήλων ἅμα τῷ διορισμῷ των εἰς τὴν Ὑπηρεσίαν εἰς *οἱονδήποτε σημεῖον πέραν τοῦ κατωτάτου σημείου* τῆς ἐγκεκριμένης κλίμακος τῆς θέσεώς των."

("*Granting of increments other than the normal annual ones.*

Submission No. 77/66.

15. The Minister of Justice expressed the view that the Minister of Finance possesses already under General Order III/1.2(c), the power referred to in the submission and that this has been confirmed to her orally by the Attorney-General of the Republic.

Decision No. 5361.

16. Although the Council considers that the Minister of Finance, has already the power referred to in the submission, yet in order to dissolve every doubt, it has decided to confer on the Minister of Finance the powers vested in it with regard to the placing of certain officers upon

their appointment in the service at any point beyond the lowest point of the approved salary scale of their post".).

Submission No. 77/66 on the basis of which this decision was taken reads as follows:

"*Submission to Council of Ministers.*
Grant of increments other than the normal annual ones.

Towards the end of August, 1960, the Attorney-General of the Republic advised that according to the Constitutional structure the powers formerly exercised by the Governor in connection with financial control under the Colonial Regulations should be exercised by the Minister of Finance. In April, 1961, the Attorney-General again advised that 'in the absence of a constitutional or statutory provision in this respect and pending such statutory provision I would be inclined to the view that both matters (i.e. grant of additional increments to serving officers and payment of responsibility allowances) fall within the competence of the authority which at present is responsible for financial matters relating to the public service'.

2. In a subsequent advice the Attorney-General stated that the emplacement of an officer on the permanent or pensionable establishment was within the powers of the Public Service Commission but that the appointment of any officer at any point above the minimum of the approved salary scale of the post was a matter within the competence of the Council of Ministers. A copy of this advice is attached (Appendix I).

3. Until recently the grant of additional increments on first appointment has been dealt with by the Ministry of Finance on the basis of the advice referred to in para. 1 above. Recently, however, the Public Service Commission appeared to have taken the attitude that the question of granting placing increments to officers on appointment was within their competence. Thereupon the matter has again been referred to the Legal Department and the Attorney-General of the Republic re-affirmed his previous advice referred to in para. 2 above.

4. In order to dissolve the existing confusion and to put

this matter on an unequivocal basis this Ministry considers that the Council of Ministers should accept the Attorney-General's advice to which reference is made in para. 2 above and that this power should be delegated to the Minister of Finance so that the Council may not be troubled with each individual case. In exercising this power the Minister of Finance will follow the provisions of the General Orders or established practice in cases of the emplacement of unestablished officers on the permanent establishment or of appointments of daily-paid employees on a month to month basis. As the Council is aware additional increments or allowances are not granted during the present abnormal circumstances of Cyprus.

5. The Minister of Finance, who will introduce this subject, will invite Council to accept the Attorney-General's advice attached to this Submission and to delegate its power in this respect to the Minister of Finance."

In view of the contents of paragraphs 2 and 4 of the submission I consider it useful to refer to the provision of the relevant G.O. It is G.O. III/I.2(e) to which reference is also made in paragraph 15 of *exhibit* 11.

It reads as follows:

"(e) In accordance with the G.O. II/I.12 no officer may be appointed to a salary scale post at a salary above the minimum without the permission of the Administrative Secretary. This applies equally when credits are granted.".

It is stated in paragraph 5 of the Oppositions in all three recourses that it was an established practice that when daily paid employees or employees employed on a casual basis were appointed on a monthly basis emplacement increments were paid to them so that their new salary should be more or less equal to the emoluments they were receiving on a daily wage or casual basis and that this practice was applied to public officers and was officially adopted by decision of the Council of Ministers No. 5361 dated 3/2/66.

The existence of this established practice seems to be supported from paragraph 4 of the submission No. 77/66 set out above on the basis of which decision No. 5361 was taken. The applicants

in fact took this practice for granted and used it in support of their arguments.

There seems to me to be some inconsistency between the submission 77/66 and the decision 5361 inasmuch as in the submission reference is made to the grant of additional increments on first appointment and also in cases of emplacement of unestablished officers on the permanent establishment or of appointments of daily paid employees on a month to month basis, whereas the decision of the Council of Ministers, strictly construed, seems to apply to officers first appointed in the service. I venture to presume that it is very likely that the word "appointment" occurring in the phrase "upon their appointment in the service" (ἅμα τῷ διορισμῷ των ἐν τῇ ὑπηρεσίᾳ) may have been used in a sense denoting not only officers appointed in the public service for the first time but also unestablished officers placed on the permanent establishment. But as this point is not of great consequence in so far as these cases are concerned I leave the matter at that.

The two decisions 3697 of the 27/4/64 and 5361 of the 3/2/66 were the subject of judicial consideration in, at least, two previous cases i.e. *Bedros Shamassian and Others* v. *The Republic* (1973) 3 C.L.R. 341 and *Savvides* v. *The Republic* (1975) 3 C.L.R. 48. I am in complete agreement with the view expressed in the above cases that the two are quite distinct and the latter does not in any way affect the former with the result that the bar for the payment of additional increments is still in force. An additional reason why the latter cannot be said to have superseded the former is that whereas the former relates to allowances and additional increments the latter obviously relates to emplacement increments.

It was contended on the part of the applicants that the decision complained of is contrary to the provisions of Article 28 of the Constitution in that it deprives the applicants of the equal protection and/or treatment and discriminates against them. It was further argued that the fixing of the 22nd March, 1973, as the date as from which the established practice for granting emplacement increments to persons who were temporarily employed and were subsequently appointed to the permanent establishment so that their emoluments should be brought in line with what they were getting under the temporary employment is arbitrary; and that the Minister was obliged under the

General Orders to apply the same treatment to them irrespective of whether they had or had not raised the issue as they were not aware either of the established practice or of the decision of the Council of Ministers of the 3rd February, 1966. Counsel also submitted that the established practice of granting emplacement increments referred to earlier on is in substance a law and that by failing to apply it to the applicants the Minister had acted contrary to law and also that the decision amounted to a contravention of Article 7 of the International Covenant on Economic, Social and Cultural Rights ratified by Law 14/69.

And finally that the decision complained of is not duly reasoned and is the result of a defective exercise of the discretionary powers vested in the Minister in that such exercise is contrary to the principles of administrative law and proper administration.

Learned counsel for the respondents, on the other hand, submitted that the applicants are not public servants within the meaning of the Public Service Law (Law 33/67) and that, therefore, neither the Public Service Law nor the General Orders which have been saved by virtue of s. 86(1) thereof apply to them. That the practice of granting emplacement increments as a result of decision No. 5361 has never been extended to staff not governed by the General Orders or the Public Service Law. But in 1973, after the matter was raised by Eraklides, the Minister of Finance decided, on the 7th July, 1973, to apply this practice, with effect from the 22nd March of that year, which was the date when Eraklides had been appointed to the permanent establishment, to Fire Servicemen and as a result 39 Fire Servicemen appointed on or after that date benefited in the same way as Eraklides. The applicants who were appointed long before that date could not be granted any increments because this practice did not apply to them and in this respect they cannot complain of discrimination.

At the conclusion of the address of learned counsel for the respondent all counsel appearing in these cases made a joint statement which I think I should record for what it is worth. It reads as follows:

"The Applicants concede that the provisions of G.O. III/I.2(e) was not applied to members of the Fire Service

prior to the 22nd March, 1973 and that it was first applied to members of the Fire Service as a result of a decision taken by the Minister of Finance dated 7th July, 1973, embodied in *exhibit* 5 in a letter dated 13th July, 1973. There are however, other instances in which matters not provided for in the Police Law and Regulations when raised were dealt with in the same way as provided by General Orders but such decision is not given retrospective effect."

If I do not deal with all the arguments raised by learned counsel it is not out of disrespect to them but because I am of the opinion that the issue in these cases should be decided on other grounds and more particularly on the basis of the two decisions of the Council of Ministers (*exhibits* 10 and 11).

Regarding the status of the applicants in the Government service it is quite clear to me both from Article 122 of the Constitution and s.2 of the Public Service Law 1967 that they are not 'public officers' and their office is not a 'public office' and that consequently neither the General Orders, which in fact embody the conditions of service for 'public officers' nor the Public Service Law are applicable to them. The General Orders as well as the existing practice relating to the public service and public officers continue in force, in so far as they are not inconsistent with the Public Service Law, by virtue of the proviso to s.86(1) thereof.

This being the position, none of the applicants could avail himself of the provisions of the General Orders relating to increments and, therefore, none of them could have any claim to any increments other than the normal annual increments of the salary scale applicable to his post prior to the 3rd February, 1966. But on the 3rd February, 1966, decision No. 5361 was taken by the Council of Ministers. Although there is clear reference both in the submission and in the statement of the Minister of Justice appearing in *exhibit* 11 to the General Orders as being the source from which the discretionary powers of the Minister of Finance to grant increments in certain cases emanates, there is nothing in the decision itself to indicate that it was not meant to apply to all persons in the Government service and one may, therefore, reasonably assume that it is applicable both to public officers and other persons in the Government

service. But under this decision the discretion of the Minister of Finance is certainly limited to the grant of emplacement increments to officers first entering the service and, at the most, to officers first appointed to the permanent establishment but in either case "upon their appointment".

It is in the exercise of his discretionary powers under this decision that the Minister granted the two emplacement increments to Eraklides and those other Fire Servicemen who were placed on the permanent establishment on or after the 22nd March, 1973.

The remedy sought by the applicants in these cases, on the face of it, is to be put on the same step of the salary scale i.e. £546 as from the dates of their respective appointments to the permanent establishment in the same way that Eraklides and the other 39 Fire Servicemen were. But when they raised this matter with the Minister, through their counsel, the time that had elapsed from such dates was a period of between about two and twelve years. In substance, therefore, what they were claiming was additional increments; and the Minister could only satisfy their claim by granting additional increments to them. And this he had no power to do in view of the bar placed to the payment of additional increments as from the 27th February, 1964, by decision No. 3697 of the Council of Ministers.

The net result, therefore, is that at the relevant time neither emplacement increments could be paid to the applicants under decision No. 5361 because such increments are payable in the Minister's discretion only "upon their appointment" in the service and, as I said earlier on, very likely, in the permanent establishment, nor additional increments because of the bar in decision No. 3697. And as the respondent Minister had no discretion nor, indeed, power to entertain applicants' claim it does not seem to me that these recourses can succeed on any of the grounds raised.

Even if it could be conceivably argued—and no such allegation was made—that the decision of the Minister in granting emplacement increments to Eraklides and the others was erroneous and illegal on the ground that they were not first entrants in the service in the strict sense, the applicants in these cases would not be in any better position because this would not entitle them to

the same error or illegality nor would it create an obligation on the Minister to repeat it. (See Conclusions from the Case Law of the Greek Council of State (1929–1959) p. 158 and *Voyiazianos* v. *The Republic* (1967) 3 C.L.R. 239).

In the result these cases must fail and are hereby dismissed but in all the circumstances I have decided to make no order as to costs. 5

Applications dismissed. No order as to costs.