1979 June 9

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNAKIS CHARALAMBOUS,

Applicant,

v.

1. THE MINISTER OF INTERIOR,
2. THE CHIEF OF POLICE,

Respondents.

(*Case No.* 107/77).

Administrative Law—Administrative acts—Lawful administrative acts—Revocation—General principles applicable—Promotion in the Police Force—Suspension pending an inquiry into certain information against the applicant—Promotion has created rights—It could not be cancelled nor revoked indefinitely—Because the indefinite revocation is tantamount to the cancellation of the act.

Police Force—Promotions—Revocation—Cancellation—General principles.

Public Officers—Promotion—Cancellation or revocation—Possible only before its acceptance.

By letter dated the 4th January, 1977, the applicant, a Superintendent "B" in the Police Force, was informed that the Minister of Interior decided to offer him promotion to the post of Superintendent "A". The applicant accepted the offer of promotion by a letter dated the 10th January, 1977. On February 8, 1977 the Director-General of the Ministry of Interior informed the applicant that the Minister of Interior decided to suspend his promotion pending an inquiry regarding information which has been received against him in the Ministry. Hence this recourse.

Held, that the Minister of Interior could only revoke the promotion before its acceptance by the applicant (*see Panayides*

v. *Republic* (1972) 3 C.L.R. 467); that administrative authorities generally cannot revoke their lawful acts from which there emanated vested rights of civil servants or members of the police force; that an act of the administration cannot be revoked indefinitely if this amounts to the annulment of the act; that once the administrative acts have created rights in the hierarchy of the Police Force, and once promotions are within the realm of public law, the acts cannot be cancelled, nor revoked indefinitely, as was done in the present recourse, because the indefinite revocation is tantamount to the cancellation of the act and/or its revocation; that, therefore, the cancellation or revocation of the promotion of the applicant to the rank of Superintendent "A" is contrary to the provisions of the Constitution and the Law, and was made in excess or abuse of the powers vested in the administrative organ; accordingly the *sub-judice* decision must be annulled.

Sub-judice decision annulled.

Cases referred to:

Panayides v. *Republic* (1972) 3 C.L.R. 467;

Tzavelas and Another v. *Republic* (1975) 3 C.L.R. 490;

Ridge v. *Baldwin and Others* [1963] 2 W.L.R. 935;

Georghiades v. *Republic* (1967) 3 C.L.R. 653 at p. 669;

Ioannides v. *Republic* (1972) 3 C.L.R. 318 at p. 326;

Zinieris v. *Republic* (1975) 3 C.L.R. 224;

Peristeronopighi Transport Co. Ltd. v. *Republic* (1967) 3 C.L.R. 451;

HadjiPetris v. *Republic* (1968) 3 C.L.R. 702;

Psaltis v. *Republic* (1971) 3 C.L.R. 372 at p. 378;

Decisions of the Greek Council of State in Case Nos. 3030/66, 801/69, 2879/69 and 1716/70.

Recourse.

Recourse against the decision of the respondent to suspend applicant's promotion to the post of Superintendent "A" and to promote to the said post the interested parties in preference and instead of the applicant.

A. Triantafyllides with *P. Ioannides*, for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these proceedings under Articles 28 and 146 of the Constitution the applicant, Yiannakis Charalambous, seeks a declaration (a) that the decision of the Minister of Interior to suspend his promotion to the post of Superintendent "A" is null and void and of no effect whatsoever; and (b) that the decision of the respondents to promote to the post of Superintendent "A" the persons appearing in *exhibit* 2 attached hereto as Appendix A is null and void and of no effect whatsoever.

The applicant is a Gazetted Officer and held until 4th January, 1977 the rank of Superintendent "B" in the police force and was posted as assistant divisional Commander at Morphou. On 4th January, 1977, he was offered promotion to the rank of Superintendent "A" by the Minister of Interior and the said offer was accepted by him by a letter dated 10th January, 1977. After his acceptance and because certain information reached the Minister of Interior, the Director-General of the Ministry in question addressed a letter to him dated 8th February, 1977, informing him that he had instructions by the Minister to inform him that the offer made to him on 4th January, 1977, was suspended pending an inquiry regarding information which has been received against him in the Ministry. It appears further that the information which was placed before the Minister raised some doubts as to the loyalty of the applicant as a member of the force before the coup, during the coup and after the coup. The applicant feeling aggrieved filed the present recourse on 28th March, 1977, alleging that the suspension of his promotion was null and void and of no effect whatsoever. Indeed his application was based on the following grounds of law, viz., (a) that the respondents have no right under the law to suspend a promotion already made and accepted; (b) under the well established principles of administrative law the respondents have no right to suspend his promotion; (c) that the applicant has been discriminated upon contrary to Article 28 of the Constitution; and (d) the respondents have acted in excess or abuse of powers in that while they promoted permanently and substantively the interested parties to the post of Superintendent "A" they have so far not concluded his promotion to that post.

On the contrary, counsel for the respondents in his statement of facts tried to justify the decision of the Minister of

Interior and put forward that after the acceptance by applicant of the respondents' offer for promotion, the respondents received material information concerning the applicant's faith and devotion to the law and order, and the lawful authorities of the Republic. Indeed counsel stated that he relied on a document dated 13th April, 1977, marked *exhibit* 3A. This *exhibit* 3A, I may add, was unsigned and counsel for the respondents informed the Court that this information contained in *exhibit* 3A was given to the Minister himself and was typed by his secretary. It appears further that this document has not been signed by the maker of it. In support of his opposition counsel for the respondents relied on this following ground of law, viz., that the decision complained of was lawfully and properly taken by the respondents under s. 13 of the Police Law, CAP. 285, and the well established principles relating to the suspension and or revocation of administrative acts on grounds of public interest and within reasonable time from the date they were taken.

On 10th June, 1977, counsel for the applicant addressed a letter to the Registrar of the Supreme Court in these terms:

> "Please take notice that at the directions of the above case fixed on the 13th June 1977 the Applicant will require particulars under para. 2 of the facts of the opposition regarding 'material information concerning the Applicant's faith and devotion to the Law and Order and the lawful Authorities of the Republic', as well as any reports received after the decision to suspend from any appropriate authority regarding the investigation or veracity or otherwise of the above information".

On 30th June, 1977, Mr. Triantafyllides made this statement: "In this case together with the main application we have filed an application for particulars. I apply that this case, with the consent of my learned friend, be left for mention sometime in September so that I may consider the position fully". Mr. Aristodemou having not objected the case was adjourned to the 19th September, 1977, for further directions. On 19th September, 1977, this case was handled by a colleague of mine, Mr. Justice Malachtos, and again the case was adjourned for reasons on record to 10th October, 1977; and on that date the case was adjourned once again on 7th November, 1977. Finally the case was fixed for hearing on

18th January, 1978. On that date counsel Mr. Triantafyllides made this statement: "In the present case, the Republic purported to suspend the promotion of the applicant on the basis of certain facts which they allege to be in their possession. Although our stand is that from the legal point of view the promotion is final, and cannot be suspended, nevertheless, the factual aspect may be part of our case, as well, and therefore, my learned friend has agreed to supply us with the main particulars of those facts so as to be able at the hearing of the case to argue on both grounds, both on the legal points as well as on the facts. Also if there is any new decision in the matter my learned friend will let me know in due course". In the light of this, all counsel agreed that the case should be left over for another date until those facts are given to them. The case was fixed for hearing on 20th February, 1978. On that date when counsel for the applicant Mr. Triantafyllides addressed the Court he, *inter alia*, made this statement: "So far we are in the dark regarding the grounds. We have not been supplied with those grounds, and naturally my learned friend when establishing his case will have to prove to your satisfaction that there existed such points which induced the Minister to rely on *exhibit* 2. Until these points are thrashed out, we are unable to address the Court further because naturally our address, will depend very largely on the factual aspect of the case, so I will not proceed further with this opening and I will let my learned friend at the proper time put forward his case, and the evidence, and then I will reserve the right to embark on my final address". On the contrary Mr. Aristodemou, counsel for the Republic, quite rightly in my view, expressed his sorrow for not being ready to address the Court because he said he did not have in his hands available the information he promised to furnish to the Court and supply the other side with. Questioned by Court as to when he would have the information required he said he was hoping that the information will be supplied to him within a month. He concluded that he had no alternative but to ask for an adjournment. As there was no objection the case was adjourned to 30th March, 1978, for continuation of hearing. Indeed counsel for the Republic filed in Court a document containing the information which was placed before the Minister of Interior, prior to 10th February, 1977, orally and was recorded by him. This document, I repeat once again, has not been signed.

On 30th March, 1978, Mr. Aristodemou produced in Court the unsigned document which sets out material information given orally to the Minister. Then counsel addressed the Court in these terms: "I want to know, Your Honour, and I am entitled to know as defence counsel in this case, whether the other side has completed their argument on the legal points, because I want to know what I am facing in this case, and because I think that it would not be proper to raise any new grounds for annulment regarding the decision complained of after my address to this Court". And Mr. Triantafyllides in reply made this statement: "Mr. Aristodemou has given us yesterday a document concerning some information which is before the Government and now that I have seen this document, I would like to be given an adjournment in order to elaborate further on my address before my learned friend starts his address". Mr. Aristodemou having raised no objection to the adjournment the Court granted once again the adjournment and the case was fixed for further hearing on 11th May, 1978. Then when Mr. Triantafyllides started dealing with the contents of that document the Court made this statement: "This document worries me because it has been marked as *exhibit* 3A. It was meant only for you to obtain some sort of information as to what has happened in the office of either the Minister or someone else, and it is high time to have your views now, so that no-one would say that that was a document which is admissible in a Court of law". Then quite rightly counsel made this submission: "My answer to this is that the Court can in no way rely on this document because there was no document before the Minister; and although I am grateful to my learned friend for putting this document, the position of the applicant is that he is the victim of gossip. We do not know in what way this information reached the Minister and if it ever reached him. The first point which I make is that even assuming that there was a proper document and that everything was proved correct it was not possible, in the circumstances, for the Minister to issue the administrative act complained of. Indeed I dispute very hotly (a) all the allegations contained in the document; and (b) that these allegations ever reached the Minister or in any case that if they reach him in the way it is presented in the document". Finally he concludes: "In my submission this document is not a 'document' it is a record of something

said orally and completely inadmissible, and I do not think that the other side will rely on it. I take it that the other side was going to prove these allegations".

On the other hand, Mr. Aristodemou quite properly made this statement: "It has been argued by Mr. Triantafyllides that he was expecting and he is expecting the respondent to prove the allegations contained in p. 2 of *exhibit* 3. But, as the decision complained of clearly states, the promotion of the applicant is suspended pending the investigation of certain information. That is the exact wording. Interpreting that wording of the decision, we come to the conclusion and we say that the Minister has not accepted as true the allegations contained in p. 2 of *exhibit* 3; he has not rejected them as wrong or as false, but he said I want to investigate them according to the procedure laid down by the legislature, and so what is the truth about this case as to the loyalty of the applicant. So, Your Honour, I am not under the burden to adduce evidence, and I am not going today to prove the truth of the allegations. They will be proved if necessary through the normal procedure". Finally having made certain observations as to the validity of the unsigned paper, I adjourned the case and it was fixed for hearing on the 18th July, 1978. On that date counsel for the respondent having addressed the Court and in being pressed whether evidence would be adduced regarding *exhibit* 3, the unsigned document, he made this statement: "I will ask the Minister to come and give evidence". And in any event the Minister of Interior did not accept as true and accurate the said information, but he rejected same as untrue and inaccurate and rightly decided to investigate it.

Finally on 28th July, 1978, Mr. Aristodemou informed the Court that in spite of his promise to call Mr. Mourouzides as a witness he said that it was not found possible because he was still on sick leave. The case was adjourned once again to 12th October, 1978, and on that date Mr. Papasavvas appearing on behalf of Mr. Aristodemou made this statement: "Mr. Aristodemou assured me that he has communicated with the other side and both have agreed in view of certain developments with regard to the nature of this case, to seek an adjournment; and because Mr. Aristodemou appears in a continuous case in the Assize Court of Nicosia and that the case should be left for further directions sometime towards the end of December.

These cases are now under consideration by the appropriate authority of the Government to make a policy decision regarding all cases". In addition counsel appearing for the applicant Mr. Ioannides supported the stand of counsel for the Republic and both agreed that the case should be fixed for further directions on the 18th December, 1978. On that date both counsel again applied for a further adjournment putting forward that the appropriate Ministry will reach a final decision in order to withdraw this recourse. The case was fixed once again for further directions on 29th January, 1979.

There is no doubt that there has been a great number of adjournments always hoping that the appropriate Ministry would have taken a decision in favour of the applicant but nothing has happened and inevitably the Court having heard the able contentions of both counsel, reserved judgment and delivered it on 9th June, 1979. It is necessary to add that Mr. Aristodemou on that date made this statement: "Before Your Honour will read the judgment in Cases 111/77 and 123/77, I would like to reiterate again what I have said previously during the hearing of these two cases that the result of the trial of those cases would be considered by me as affecting Cases 107/77 and 126/77 because common grounds of law and/or facts arise, and the decision attacked is the same in all four cases". Mr. Ioannides joined in this statement.

Having considered very carefully the facts and circumstances of this case and having listened to the addresses of counsel, I think I ought to put on record that the promotions of police officers are governed by the Police Law Cap. 285, as amended by a number of laws and particularly by Laws 19/60, 21/64 and 29/64. There is no doubt that the applicant falls within the provisions of section 13(1) of Cap. 285, as well as the Regulations governing promotions which are made in accordance with section 10 of the Law, and the general Regulations which provide for disciplinary offences and the conduct of the members of the Police Force. Once the Regulations for disciplinary offences are still in force, and once the administration was believing that the applicant has committed offences, it was indeed for the appropriate authority to make it clear, and to follow the procedure laid down by the Law and the Regulations, but not to act contrary to those provisions. There is no doubt that the administration offered the applicant the post in question;

and to say the least he must have been very surprised indeed when he received the bad news that there was a number of complaints against him without even calling a single witness, or without adducing any kind of admissible evidence against him. With respect the document in question is not admissible, and it is to the credit of both counsel, in addressing the Court to concede that such a document was unacceptable in law. But I would go further and state that when the Minister of Interior decided to offer promotion to the applicant it was necessary for him to investigate in advance all the facts and circumstances before offering to him promotion. With that in mind, I have reached the view, that when the Minister of Interior decided to offer promotion to the applicant, and before the acceptance of the promotion by him viz., for the completion of the administrative act, only then the agreement between the administration and the applicant could have been revoked. If any authority is needed the case of *Panayides* v. *The Republic through the Public Service Commission* (1972) 3 C.L.R. 467, in my opinion supports the above stand. But even the omission to publish in the Official Gazette is not an obstacle to the promotion once the legal effect of the promotion begins as from the date of its offer and its acceptance, therefore, it cannot be freely revoked. See also *Tzavelas and another* v. *The Republic* (1975) 3 C.L.R. 490. Indeed I would go further and state that the administrative authorities generally cannot revoke their lawful acts from which there emanated vested rights of civil servants or members of the police force. It is equally right to emphasize that an act of the administration cannot be revoked indefinitely if this amounts to the annulment of the act. In addition, I would add, that the grounds of public interest raised by the Minister of Interior cannot stand, and are unacceptable because once the promotion was lawful it is unthinkable for one to say that the administration could revert after the promotion because new information has been received and to justify itself by saying: "Our decision to promote you to the post which you are holding today was wrong and we take this stand because it is in the public interest that you should not have been in the post you are holding". In my view it is also indicative that the acts of retrospective revocation of lawful administrative acts show that they are only acts which continue from day to day, and I repeat, only then the administration can interfere. Particularly so, with regard to promotions it is inplied, and the

authorities support this principle, that the holder of the post will continue to hold it until he is promoted again or leaves the service or is dismissed from the service or for any other reasons. On this subject see Supplement of Case Law 1969–1971, paragraph 421 at p. 190. And for misconception of facts see paragraphs 433, 434, 435, 437, 498 and 39. See also Manual of Administrative Law, 1977 edition at p. 168, paragraph 174 under the heading "Repeal and revocation of the administrative act". See also page 170, para. 176.

It was further stated that the administration should in principle have in its possession sufficient material against the applicant in order to revoke the administrative act and in order to be able to invoke the public interest. I have no doubt in this connection that the administration should have had such information as would have warranted a decision, and not to have revoked the decision taken by it for the purpose of making inquiries, in order to find out, whether there is sufficient information for its revocation subsequently. This stand is consonant with the English authorities. It was, also, said earlier that if they accepted that the applicant committed offences of a disciplinary nature, then the procedure laid down for disciplinary offences ought to have been put into effect, so that the applicant would have been able to defend himself and vindicate his rights.

The question remains whether the administration acted properly in accordance, also, with the principles of natural justice.

In the case of *Ridge* v. *Baldwin and Others* [1963] 2 W.L.R. 935, the question arose whether the dismissal of a police constable was made contrary to the principles of natural justice i.e. without giving him the opportunity by answering the charges preferred against him. Lord Reid in delivering his judgment held that the rules of natural justice have been violated.

The position of the applicant was, and still is, that the Ministry failed to carry out a due inquiry earlier and before the revocation of the promotion of the applicant with a view of collecting all the material in relation to his case. Counsel for the Republic Mr. Aristodemou in addressing the Court on this issue, rightly in my opinion argued that if the Court was persuaded that no due inquiry has been carried out then admittedly the administration

has exercised its discretionary powers upon wrong legal criteria and the decision has been taken in excess of power. See *Athos Georghiades* v. *The Republic* (1967) 3 C.L.R. 653 at p. 669, *Ioannides Constantinos* v. *The Republic* (1972) 3 C.L.R. 318 at p. 326 and *Michael Zinieris* v. *The Republic* (1975) 3 C.L.R. 224. It was further emphasized by counsel that the revocation of the promotion was made without setting any time limit and consequently the administration was wrong, because the administrative act is equivalent to the revocation of the promotion. In support of this view see Decisions of the Council of State Nos. 3030/66, 801/69, 2879/69, 1716/70, which support the stand and the legal view of counsel for the Republic.

Furthermore both counsel of the applicant and counsel of the Republic argued that, even if the administration possessed material warranting disciplinary proceedings against the applicant—which the applicant had requested from the Minister of the Interior—then again the administration has failed according to the principles of natural justice, to put before the applicant the information which it had in order to give him the opportunity of answering and duly face the charges against him. See *Peristeronopighi Transport Co. Ltd.* v. *The Republic* (1967) 3 C.L.R. p. 451, *HadjiPetris* v. *The Republic* (1968) 3 C.L.R. 702, *Psaltis* v. *Republic* (1971) 3 C.L.R. 372 at p. 378 as well as the decision of the English Court which I have quoted earlier.

Having reached the view that the correct principles governing the present case are that once the administrative acts have created rights in the hierarchy of the Police Force, and once I accept that, promotions are within the realm of public law, the acts cannot be cancelled, nor revoked indefinitely, as was done in the present recourse, because the indefinite revocation tantamounts to the cancellation of the act and/or its revocation.

I repeat that the administrative authorities, should not revoke their lawful acts by which rights have been created in favour of persons serving in the Republic of Cyprus. I am positive that the administration is aware that, during the present critical times the Republic of Cyprus is facing, the legality of administrative acts is consistent with a state which supports the rule of law; and a state which does justice to all its citizens and creates a feeling of security and confidence. But I go

further and state that once the act was issued, and was issued lawfully, as in the present application, it is obligatory on the administrative authority, once it is bound by the law to issue it; and because the promotion of the applicant has been made after the Minister of Interior has taken into consideration the merits of each candidate. Finally I would add that once rights have emanated by the act of promotions the administration cannot revoke the promotion.

It is useful further to add that even illegal administrative acts should not be revoked once a long time has elapsed from their issue. In any case I fully adopt and apply the views of Proffessor Papahatzis[1] in the light of the circumstances of the present case.

For the reasons I have given at length I came to the conclusion that the cancellation or revocation of the promotion of the applicant to the rank of Superintendent "A" is contrary to the provisions of the Constitution, and the law, and was made in excess or abuse of the powers vested in the administrative organ.

Recourse succeeds. The decision or the act of the administration is declared null and void and of no legal effect whatsoever.

Sub judice decision annulled.

1. Professor Papahatzis "Studies on Administrative Disputes" 4th Ed. 1961, at p. 406.