

1981 August 31

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DINOS N. IOANNOU,

Applicant.

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case Nos. 328/78 and 90/79).

Act or decision in the sense of Article 146 of the Constitution—Classification of posts in Electricity Authority of Cyprus and nomination of salary scales therefor—Tantamount to schemes of service—Which are acts of a legislative nature and not acts of executive or administrative nature in the sense of the above Article—Moreover schemes constitute delegated legislation made by the Electricity Authority for the purpose of carrying into effect the provisions of the Electricity Development Law, Cap. 171 and Law 61 of 1970—And they cannot be made the subject of a recourse under the said Article 146. 5
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Administrative Law—Administrative acts or decisions—Composite administrative act—Taken on basis of a continuing process resulting in a final administrative act—Intermediate parts of the wider composite administrative action merged in the final act—And they cannot be made the subject of a recourse as they lost their executory character by such merger. 15

Public Officers—Appointments and promotions—Judicial control—Principles applicable.

Public Officers—Appointments and promotions—High Office—Appointing Authority vested with quite wide discretionary powers. 20

Public Officers—Appointments and promotions—Seniority—It prevails when all other factors are equal.

In May, 1978, the respondent Authority proceeded with the implementation of a re-organization scheme of its management structure, which envisaged the creation of a number of posts. The implementation of the re-organization was made in two steps. The first step was the nomination of engineers to the various posts of the new organization structure and the second step was the appointment of the engineers to such posts. The first step (the nomination) was taken at a meeting of the Authority's Standing Sub-Committee on Staff Matters which after taking into consideration the experience, merit, ability, qualifications, years of service with the Authority and seniority in present grade, age and general record and Management's recommendations, decided to recommend to the Authority the nominations to the various posts of the new Organization Structure. Applicant was nominated as Assistant Chief Commercial Officer (Consumer Relations) on scale 06 and was informed of this nomination by letter of the respondent Authority dated May 19, 1978. Applicant by letter dated June 29, 1978 complained for his selection to the above post and on July 31, 1978, he filed recourse No. 328/78 by means of which he prayed for the following relief :

- “ (a) A declaration of the Hon. Court that the decision of the respondents to nominate Messrs. Andreas Charalambides for the post of Assistant Personnel Officer, Socratis Prodromitis for the post of Assistant Chief Commercial Officer (Marketing) and Mr. Costas Ioannou for the post of Assistant Chief Commercial Officer (Executive) in preference and instead of the applicant, is null and void and of no effect whatsoever.
- (b) A declaration of the Hon. Court that the decision of the respondent to classify the post of Assistant Chief Commercial Officer (Consumer Relations), for which post the applicant was nominated in scale 06, is null and void and of no effect whatsoever ”.

On December 12, 1978, the respondent Authority proceeded with the implementation of the second step and having appointed applicant to the above post informed him of such appoint-

ment by letter dated December 15, 1978. Applicant accepted the appointment without prejudice to his rights in the above recourse No. 328/78 and on February 20, 1979 he filed recourse No. 90/79 by means of which he claimed the following relief :

- “ (a) A declaration of the Hon. Court that the decision of the respondents to appoint and/or promote Messrs. Andreas Charalambides to the post of Assistant Personnel Officer, Socratis Prodromitis to the post of Assistant Chief Commercial Officer (Marketing) and Mr. Costas Ioannou to the post of Assistant Chief Commercial Officer (Executive) in preference and instead of the applicant, is null and void and of no effect whatsoever ”.

Counsel for the applicant contended that the respondent Authority failed in its paramount duty to select the best candidate for each new post and that applicant was senior by a year and had longer experience than one of the interested parties.

Counsel for the respondent raised the following objections :

- (a) That relief (b) in recourse No. 328/78 does not lie as the act and/or decision complained of therein is not an executory act or decision in the sense of Article 146 of the Constitution.
- (b) That relief (a) in recourse No. 328/78 does not lie as the act and/or decision complained of therein is not an executory act in the sense of Article 146.1 of the Constitution which could be challenged by a recourse.

Counsel for the respondent contended in this connection that the decisions of the respondent Authority to nominate the interested parties to the posts in question and the applicant to the post of Assistant Chief Commercial Officer (Consumers Relations) constituted interim steps in a composite act which has been completed by the appointment of the officers in question to the said posts and once, therefore, the composite act has been completed, no recourse can lie against the acts or any decisions made or taken during the interim stages that were later superseded by the completed composite act, and that until the completion of the administrative act by the actual appointment, the nominations constituted matters

which were "internum" of the respondent Authority and could not be challenged by the recourse.

Held, (I) with regard to objection (a) above :

5 That the classification referred to in relief (b) of recourse 328/78 is tantamount to a scheme of service ; that schemes of service are acts of a legislative nature and not acts of executive or administrative nature in the sense of Article 146 of the Constitution (see *PASYDY v. Republic* (1978) 3 C.L.R. 27) ; that, also, schemes of service constitute delegated legisla-
10 tion made by the Electricity Authority of Cyprus for the purpose of carrying into effect the provisions of the Electricity Development Law, Cap. 171 and Law 61/1970 (see *Police v. Hondrou and Another*, 3 R.S.C.C. 82); that, therefore, a recourse does not lie in respect of relief (b) in recourse No. 328/78 ;
15 accordingly relief (b) must be dismissed.

Held, (II) with regard to objection (b) :

20 That the mode of action of the respondent Authority in this case by proceeding first with the nominations in question to the relevant posts and then with the appointments to same, has in the circumstances the characteristics of a composite administrative action taken on the basis of a continuing process resulting in a final administrative act ; that although such nominations were only independent intermediate parts of the wider composite administrative action they merged in the final
25 act ; and that though they cannot be the subject of a recourse as they lost their executory character by such merger, nevertheless being a legal prerequisite to such final act, their invalidity, if any, renders all acts which follow, including the final concluded act, null and void, as the invalidity of part of
30 a composite administrative action leads to the invalidity of the final act, because the component acts of the action in their nature are not separate and independent of each other (see, *inter alia*, *Papaleontiou v. The Republic, through the Public Service Commission* (1970) 3 C.L.R. p. 54 at p. 62) ; that in
35 the present case there has been a series of independent acts, the one considered as a legal prerequisite to the other, which lost their individual character after the final act of appointment ; that in this way the act of the nomination lost its individual executory character and could not thereafter be by
40 itself the subject of a recourse ; that, therefore, Recourse No.

328/78 has to be dismissed, but the legality of these nominations will have to be examined as part of the examination of the whole composite action as by challenging by Recourse No. 90/79 the final act, the whole of such composite action of the administration is considered as challenged. 5

Held. (III) *on the merits of recourse 90/79 :*

(1) That the selection of a candidate for promotion is within the powers and discretion of the authority or organ concerned conferred upon it by law ; that when the authority or organ concerned has exercised its discretion in reaching a decision, 10
after paying due regard to all relevant considerations, and without taking into account irrelevant factors, the Court will not interfere as to the exercise of such discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provisions of the Consti- 15
tution or of any law or has been made in excess or abuse of powers vested in the authority or organ concerned (see *Hji Georghiou v. Republic* (1974) 3 C.L.R. 436 at p. 445).

(2) That the totality of the circumstances as appearing from the relevant minutes and the personal files of the parties, show 20
that the subject decisions were taken after a proper inquiry was carried out and that nothing else but material facts were taken into consideration in reaching the subject decision which is a duly reasoned one ; that the respondent Authority exercised its discretion in the circumstances properly ; that 25
one should not lose sight of the fact that in selecting the most suitable candidate for appointment to high office in the administrative structure, the appointing authority is vested with quite wide discretionary powers (see *Frangos v. The Republic of Cyprus through the Public Service Commission* (1970) 3 C.L.R. 30
312) ; that moreover the seniority of the applicant by a year obviously could not prevail even if it was considered to be a marked one as not all other factors were equal because the recommendations of the management and the views of the standing sub-committee together with all other relevant factors 35
obviously carry the day in favour of those selected for nomination and finally appointed; that, therefore, in the present case the respondent Authority exercised its discretion properly and in accordance with the general principles of Administra-

tive Law relevant to the issue of the exercise of a discretion in such circumstances ; accordingly this recourse must fail.

Applications dismissed.

Cases referred to :

- 5 *PASYDY v. Republic* (1978) 3 C.L.R. 27 ;
Papapetrou v. Republic, 2 R.S.C.C. 61 ;
Police v. Hondrou and Another, 3 R.S.C.C. 82 ;
Panayides v. Republic, (1973) 3 C.L.R. 467 ;
Geodelekian v. Republic, (1970) 3 C.L.R. 64 ;
10 *Papaleontiou v. Republic* (1970) 3 C.L.R. 54 at p. 62 ;
Nemitsas Industries Ltd. v. The Municipal Corporation of Limasol and Another (1967) 3 C.L.R. 134 ;
Hji Georghiou v. Republic (1974) 3 C.L.R. 436 ;
15 *Michaeloudes and Another v. Republic* (1979) 3 C.L.R. 56 at pp. 71-72 ;
Papanicolaou (No. 1) v. Republic (1968) 3 C.L.R. 225 at p. 232 ;
Vassiliou and Others v. Republic (1969) 3 C.L.R. 417 at p. 425 ;
Theodossiou v. Republic, 2 R.S.C.C. 44 ;
Frangos v. Republic (1970) 3 C.L.R. 312 ;
20 *Decision of the Greek Council of State in Case No. 2338/1964.*

Recourses.

- Recourses against the validity of promotions and/or appointments to the posts of Assistant Personnel Officer and Assistant Chief Commercial Officer in the Electricity Authority of
25 Cyprus.

E. Lemonaris, for the applicant.

G. Cacoyannis, for the respondent.

Cur. adv. vult.

- 30 A. LOIZOU J. read the following judgment. These two recourses have, by direction of the Court made with the consent of the parties, been heard together as they present, in many respects, common questions of law and fact.

- 35 By recourse No. 328/78 the applicant prays for "(a) A declaration of the Hon. Court that the decision of the respondents to nominate Messrs. Andreas Charalambides for the post of Assistant Personnel Officer, Socratis Prodromitis for the

post of Assistant Chief Commercial Officer (Marketing) and Mr. Costas Ioannou for the post of Assistant Chief Commercial Officer (Executive) in preference and instead of the applicant, is null and void and of no effect whatsoever. (b) A declaration of the Hon. Court that the decision of the respondent to classify the post of Assistant Chief Commercial Officer (Consumer Relations), for which post the applicant was nominated in scale 06, is null and void and of no effect whatsoever". 5

By recourse No. 90/79 the applicant prays for "(a) A declaration of the Hon. Court that the decision of the respondents to appoint and/or promote Messrs. Andreas Charalambides to the post of Assistant Personnel Officer, Socratis Prodromitis to the post of Assistant Chief Commercial Officer (Marketing) and Mr. Costas Ioannou to the post of Assistant Chief Commercial Officer (Executive) in preference and instead of the applicant, is null and void and of no effect whatsoever". 10 15

Some time in May 1978, the respondent Authority proceeded with the implementation of a re-organization scheme of its Management structure, which appears in the form of a tree in *exhibit 5*. This scheme envisaged, *inter alia*, the creation of a number of posts, and we are concerned in this recourse with the following ones: (1) Assistant Chief Personnel Officer (Productivity, Education, Training and Welfare); (2) Assistant Chief Commercial Officer (Marketing); (3) Assistant Chief Commercial Officer (Executive); (4) Assistant Chief Commercial Officer (Consumers Relations). 20 25

The grading of the aforesaid posts was decided by the respondent Authority after taking into consideration the recommendations of Consultants from the South of Scotland Electricity Board who carried out a job evaluation of all the said posts. Their grading was also the subject of extensive consultations with the Electricity Authority of Cyprus, Engineers Union, with which an agreement was reached on this matter. The duties and level of responsibility of the first three posts are different from those of the Assistant Chief Commercial Officer (Consumers Relations) as it comes out from the said job evaluation. 30 35

In accordance with the programme for the implementation of the reorganization, the first step was that the respondent

Authority should proceed with the nominations of engineers to the various posts of the new organization structure, this to be followed at a later stage, and in any event before the end of 1978 in accordance with an agreement with the Unions, by appointments to the various posts. The procedure followed by the respondent Authority was as follows:

The Management submitted their recommendations on the nominations to the Authority's Standing sub-Committee on Staff Matters. Management's recommendations were formulated at a number of meetings attended by the Chief Engineer and General Manager, the Deputy Chief Engineer, the Assistant Chief Engineer Commercial, the Assistant Chief Engineer O and M, and the Chief Personnel Officer. At its meeting of the 3rd May, 1978, the Authority's Standing Sub-Committee on Staff Matters, after taking into consideration experience, merit, ability, qualifications (as called for by the approved relevant Scheme of Service), years of service with the Authority and seniority in present grade, age and general record and Management's recommendations, decided to recommend to the Authority the nominations to the various posts of the new Organization Structure.

The relevant minute of the Standing Sub-Committee on Staff Matters held on the 3rd May, 1978, *exh. 1*, reads as follows.

"694. To consider Management's Recommendations for nominations to the various posts of the new Organization Structure approved by the Authority.

The General Manager recalled that in accordance with the programme for the implementation of the Reorganisation the next step to be taken is for the Authority to nominate the employees to the various posts of the new structure, which is attached as Appendix III.

The General Manager further informed Members that the recommendations submitted were unanimous and were formulated by Management at a number of meetings attended by himself, the Deputy Chief Engineer, the Assistant Chief Engineer Commercial, the Assistant Chief O & M and the Chief Personnel Officer. For the posts of the Financial Function recommendations were submitted by the Chief Accountant. The General Manager then explained the

procedure, outlined below, which was followed by Management in submitting recommendations:

Management started with the most senior posts of the new Structure i.e. those in Scale 03 and worked their way down to Scale 08. In order to formulate their recommendations for each post consideration was given to all the engineers of the Authority starting with the most senior ones i.e. those with the grade of Senior Engineer and then those with the grade of Engineer I, Engineer II, Engineer IIIA and Engineer III. 5
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A list of all employees who were considered for nomination with their service details is attached as Appendix II. An enquiry was also conducted in order to find out which engineers are interested for nominations to posts entailing geographical transfer. The outcome of the enquiries was taken into consideration by Management in formulating final recommendations. In case where none of the engineers, who were considered by Management suitable for a particular post, expressed consent for geographical transfer, Management's recommendation was made after taking all relevant factors into consideration. 15
20

After taking into consideration experience, merit, ability, qualifications (as called for by the approved relevant Scheme of Service), years of service with the Authority and seniority in present grade, age and general record and Management's recommendations, the Sub-Committee decided to recommend to the Authority the nominations as they appear in Appendix I. 25

The Sub-Committee decided also to recommend that in order to give the opportunity to engineers to acquire experience in all aspects of the work of the Authority, authority be given to Senior Management to arrange for secondment of engineers between sections of the same function and between functions. Also undesignated engineers in Scale 08 and Assistant Engineers in Scale 09 to be allocated from time to time to various sections of the Engineering and Commercial Functions by the Engineering Controller and the Chief Commercial Officer at Head Office, the Area Managers in Area Offices and the Power Station 30
35

Superintendents at Power Stations, according to the engineering staff requirements of each function bearing in mind the need for training of engineers in all aspects of the work of the Authority and their future development.

5 In particular the Sub-Committee recommends that 8831 C. Ioannou who is recommended for nomination to the post of Assistant Chief Commercial Officer (Executive) and whose experience so far with the Authority is in the Commercial Function should be given the opportunity

10 to acquire by secondment experience in the Engineering Function which is considered necessary for his future development.

With regard to the unanimous Management recommendation for the nomination of 8735 A. Charalambides to the post of Assistant Chief Personnel Officer (Productivity, Education, Training and Welfare), the Sub-Committee decided not to adopt Management's recommendation. The Sub-Committee instead decided to recommend to the Authority to revert to a previous decision of the Sub-Committee taken at its 'meeting of the 28th May, 1976' under Minute 666 'Manning of the Personnel Department' to the effect that the following engineers be interviewed by the Sub-Committee before a recommendation is made to the Authority:-

25 8735 A. Charalambides
 8639 N. D. Christodoulides
 8175 T. Z. Papadopoulos
 8678 P. Kephelas
 8874 A. Georghiades

30 8831 C. Ioannou
 8840 Ch. Constantinides

Regarding nominations to the senior posts in Scale 01 and 02 the Sub-Committee decided to recommend to the Authority to reconfirm the following nominations made at the Authority's meeting of 14.11.1972 under Minute 2820:

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Appendix I

Recommendations of the Standing Sub-Committee on Staff Matters for nominations to the various posts of the new Organisation Structure:

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5. In order to give the opportunity to engineers to acquire experience in all aspects of the work of the Authority, authority be and is hereby given to senior management to arrange for secondment of engineers between Sections of the same function and between functions. Also, undesigned engineers in Scale 08 and Assistant Engineers in Scale 09 to be allocated from time to time to various sections of the engineering and commercial functions by the Engineering Controller and the Chief Commercial Officer at Head Office, the Area Managers in Area Office and the Power Station Superintendents at Power Stations, according to the engineering staff requirements of each function, bearing in mind the need for training of engineers in all aspects of the work of the Authority and their future development. With regard to the recommendation concerning the nomination of 8831 C. Ioannou to the post of Assistant Chief Commercial Officer (Executive) and whose experience so far with the Authority is mainly in the Commercial function, this engineer should in 2-3 years time be transferred to an appropriate post in the Engineering function of an Area.
6. With regard to nominations to the senior posts in Scales 01 and 02 and the post of the Secretary, the Authority hereby reconfirms the following nominations made at the Authority's meeting of 14th November, 1972, under minute No. 2820:-
.....
7. No salary scales are proposed for the post of Chief Engineer & General Manager, this matter to be brought to the Authority for consideration at a later date.
8. After taking into consideration the candidates' experience, merit, ability, qualifications (as called for by the approved relevant scheme of service), years of service with the Authority and seniority in present grade, age and general record, Management's recommendations as well as the Standing Sub-Committee's recommendations, the following nominations to the various posts of the new organisation structure approved by the Authority, be and are hereby approved with effect from 1st April, 1978:

SCALE 03

.....

SCALE 04

.....

SCALE 05

.....

Assistant Chief Commercial Officer (Marketing), H. Office
8742 S. Prodromitis

5

Assistant Chief Commercial Officer (Executive), H. Office
8831 C.D. Ioannou

10

SCALE 06

.....

*Assistant Chief Commercial Officer (Consumer Relations),
Head Office*
8784 D. N. Ioannou

15

SCALE 07

.....

SCALE 08

.....

20

SCALE 09

.....

9. The scheme of service for the grade of Engineer in scale 08 to be prepared and submitted to the Authority for approval in due course.

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Members then considered the recommendation contained in Minute 694 of the meeting of the Standing Sub-Committee on Staff Matters of 3rd May 1978 concerning the filling of the post of the Assistant Chief Personnel Officer (Productivity, Education, Training & Welfare). The Chairman suggested that the subject be deferred until a Special Meeting of the Authority is convened. Members agreed".

30

The question of the filling of the post of Assistant Chief Personnel Officer (Productivity etc.) was considered at the meeting of the Authority of the 18th May, 1978 (*exhibit 3*),

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where the views expressed are stated in extenso. It is sufficient, however, for the purposes of this recourse to quote the following:

5 “3669. *Filling of the post of Assistant Chief Personnel Officer (Productivity, Education, Training and Welfare)*

10 The Chairman stated that this meeting was convened in order to consider the filling of the above post. The Chairman then recalled that the Standing Sub-Committee on Staff Matters at its meeting of 3rd May, 1978, under Minute 694, recommended to the Authority to revert to the Sub-Committee's decision contained in Minute 666, to the effect that the following engineers be interviewed before a recommendation was made to the Authority by the Sub-Committee:

15 8735 A. Charalambides
 8639 N. D. Christodoulides
 8175 T. Z. Papadopoulos
 8678 P. Kephelas
20 8874 A. Georghiades
 8831 C. Ioannou
 8840 Ch. Constantinides

25 The Chairman said that in view of the fact that no interviews were held by the Standing Sub-Committee on Staff Matters before reaching their decision to recommend the nominations to the various other posts of the new Organisation Structure, he felt that there was no justification for such interviews to be held for this particular post. Members agreed with the views expressed by the Chairman. 30 The Chairman then said that it should greatly assist the Authority in its decision to hear the views of the Management on the various candidates for this post.

35 The General Manager said that in the Management's belief Mr. A. Charalambides was the most suitable candidate and strongly recommended him for the filling of the post of Assistant Chief Personnel Officer. Before the General Manager continued to explain why the Management recommended Mr. A. Charalambides, the Chairman asked him to give the Management's views as regards

the suitability of the second candidate Mr. N. D. Christodoulides.

The Chairman then asked the General Manager to give the Management's views on Mr. A. Charalambides and to explain why the Management recommends him for this post. 5

The General Manager explained that Mr. Charalambides worked at Head Office and at the District Office. Whilst at Head Office he was in the Planning Department and the General Manager had the opportunity to study his reports personally on many subjects he had dealt with. 10
The General Manager particularly referred to the claims of Energo-Invest for the 132 kV lines. Mr. Charalambides's way of presentation and turning into concrete form the various matters that arose, as well as their orderly classification satisfied the General Manager completely; Mr. Charalambides has an analytical mind and can differentiate between substantial and secondary issues. From Mr. Charalambides's reporting, the General Manager went on, he seems to be a very capable officer. He is trustworthy and can be entrusted with the task of dealing with confidential matters. Mr. Charalambides is 46 years old, mature, and the General Manager had no hesitation in recommending him for the filling of this post". 15 20

The views of other officials were then heard and the said minute concludes as follows:- 25

"The Chairman then summed up and said that in view of what has been said it would be to the interest of the Authority to nominate Mr. A. Charalambides for the post of Assistant Chief Personnel Officer. The Vice Chairman supported the Chairman's view, subject to the following proviso: In view of the fact that this matter has taken up so much of the Authority's time, Management should be asked to watch very closely Mr. Charalambides's progress and submit a report to the Authority every six months during the first two years of his service in this post. 30 35

It was then proposed by the Chairman, seconded by the Vice Chairman and

RESOLVED UNANIMOUSLY 40

5 that (a) after taking into consideration the candidates' experience, merit, ability, qualifications (as called for by the approved relevant scheme of service), years of service with the Authority and seniority in the present grade, age and general record and Management's recommendation, Mr. A. Charalambides (EAC No. 8735), Engineer II, be and is hereby nominated for the post of Assistant Chief Personnel Officer (Productivity, Education, Training and Welfare) with effect from 1st April, 1978;

10 (b) Management to undertake to watch very closely Mr. Charalambides's progress and submit a report to the Authority every six months during the first two years of his service in this post".

15 As against these nominations the applicant filed recourse No. 328/78, both as against the selection made by the Authority under Relief A and as against the classification of the post made by it under Relief B. The complaint of the applicant emanates from the fact that these posts were graded as different by the
20 Authority and were given different salary scales with the result that the one given to him was lower than the rest. All posts were classified on salary scale 0.5, whereas that for which the applicant was nominated and later appointed was classified on scale 0.6.

25 An objection has been taken on behalf of the respondent Authority that Relief B in Recourse No. 328/78 does not lie as the act and/or decision complained of therein is not an executory act or decision in the sense of Article 146 of the Constitution.

30 It was held in the case of *PASYDY v. Republic (through The Council of Ministers)* (1978) 3 C.L.R., p. 27, following *Papapetrou v. The Republic*, 2 R.S.C.C. 61, that the schemes of service are acts of a legislative nature and not acts of an executive or administrative nature in the sense of Article 146 of the Constitution. Also that schemes of service constitute
35 delegated legislation in the sense of *Police v. Hondrou & Another* 3 R.S.C.C. 82, made by the Electricity Authority of Cyprus for the purpose of carrying into effect the provisions of the Electricity Development Law, Cap. 171, and Law 61 of 1970. I fully agree with this submission and dismiss Relief B as such
40 classification is tantamount to a scheme of service.

An objection was also taken to Relief A in case No. 328/78 to the effect that it does not lie as the act and/or decision complained of therein is not an executory act in the sense of Article 146.1 of the Constitution which could be challenged by a recourse. It was urged that these decisions of the respondent Authority to nominate the interested parties to the posts in question and the applicant to the post of Assistant Chief Commercial Officer (Consumers Relations), constitute interim steps in a composite act which has been completed by the appointment of the officers in question to the said posts and once, therefore, the composite act has been completed, no recourse can lie against the acts or any decisions made or taken during the interim stages that were later superseded by the completed composite act, and that until the completion of the administrative act by the actual appointment, the nominations constituted matters which were "internum" of the respondent Authority which could not be challenged by the recourse. In support of the aforesaid propositions I was referred to *Spiliotopoulos* in his Textbook of Administrative Law 1977 under the heading Composite Administrative Act, p. 154, para. 159, and Conclusions for the Case Law of the Greek Council of State 1929-1951, p. 166, at p. 178; and also *Panayides v. The Republic* (1973) 3 C.L.R., 467 and *Geodelekian v. The Republic* (1970) 3 C.L.R., 64; *Spiliotopoulos (supra)* at p. 164; *Kyriakopoulos* On Administrative Law, 4th Ed., Vol. 2, p. 396; and *Stassinopoulos*, The Law of Administrative Acts (1951), pp. 362 and 366.

The question, however, whether an act constitutes an interim step in a composite act, in which case no recourse lies as against the component parts of a completed executory act, has to be resolved in the light of the circumstances of each case. In the present case the applicant and the interested parties were notified by basically identical letter, dated 19th May 1978, of the decision of the Authority to nominate them to their respective new post. The one sent to the applicant (*exhibit* 4, red 122) reads as follows:

"Dear Sir,

In accordance with a recent decision of the Authority regarding the Reorganisation of its Management Structure the Authority has decided to nominate you as Assistant

Chief Commercial Officer (Consumer Relations), Head Office, with effect from 1st April, 1978.

5 Your existing grade will be abolished at the time of your appointment in your new post. Your new salary scale and the point on which you will be placed will be communicated to you together with your appointment.

A copy of the relevant Scheme of Service is attached herewith.

Yours faithfully,"

10 In reply to this communication the applicant wrote a letter dated the 29th June, 1978, (*exhibit 4*, red 123), by which in effect he complains for his selection for that post which was at a lower salary scale than other posts for which he had a claim to be selected.

15 The respondent Authority replied to that letter by letter dated the 11th July 1978, (*exhibit 4*, red 124) as follows:

"

20 The Authority decided on the nominations to the posts created by the Reorganisation of its Management Structure after taking into consideration the candidates' experience, merit, ability, qualifications (as called for by the approved relevant Scheme of Service), years of service with the Authority and seniority in present grade, age and general record and Management's recommendations".

25 On the 12th December 1978, the respondent Authority proceeded with the implementation of the reorganization and the relevant minutes (*exhibit 8*), read as follows:

"Implementation of the Reorganisation

.....

30 it was proposed by Mr. Philotas, seconded by Mr. Ghalanos and

RESOLVED UNANIMOUSLY

35 (1) that the appointment of the nominated officers, appearing on the attached list and recommended by Management for appointment to the posts of the new organisation structure and the introduction of new salary scales be and

are hereby approved with effect from 1st December 1978.
.....”

In furtherance of this decision of the respondent Authority the applicant and the interested parties were offered their respective appointments by identical letters, dated the 15th December 1978. The one addressed to the applicant (*exhibit 4*, red 135) reads as follows:

5

“Dear Sir,

Further to my letter of 19th May, 1978, I wish to inform you that the Authority decided to appoint you to the post of Assistant Chief Commercial Officer (Consumer Relations), H.Q. with effect from 1st December, 1978, in scale 06 (£2699X92-3067X111-3178).

10

Your salary from that date will be £3,067.-and your incremental date the 1st December.

15

An increase of 6% as from 1st December, 1978, and 13% as from 1st January, 1979, will be granted on the above scale.

The duties and responsibilities of your post are described in the Scheme of Service which has already been forwarded to you with my letter of the 19th May, 1978.

20

If you are prepared to accept this appointment you are requested to signify your acceptance by returning within two weeks the duplicate copy of this letter duly signed, dated and witnessed.

25

Yours faithfully,”

The applicant accepted same without prejudice to his rights concerning his recourse to the Supreme Court number 328/78. Following this decision the applicant filed recourse number 90/79, challenging thereby its legality.

30

It is clear from the aforesaid that the actual selection of the applicant and the interested parties for the new post and the examination of their respective merits, careers and qualifications, was done when the decision to nominate them was taken.

The mode of action of the respondent Authority in this case by proceeding first with the nominations in question to the

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relevant posts and then with the appointments to same, has in the circumstances the characteristics of a composite administrative action taken on the basis of a continuing process resulting in a final administrative act. And although such

5 nominations were only independent intermediate parts of the wider composite administrative action they merged in the final act, and though they cannot be the subject of a recourse as they lost their executory character by such merger, nevertheless being a legal prerequisite to such final act, their invalidity,

10 if any, renders all acts which follow, including the final concluded act, null and void, as the invalidity of part of a composite administrative action leads to the invalidity of the final act, because the component acts of the action in their nature are not separate and independent of each other (See *Papaleontiou*

15 *v. The Republic, through the Public Service Commission* (1970) 3 C.L.R., p. 54 at p. 62, where reference is made to the Conclusions from the Jurisprudence of the Greek Council of State (1929–1959) at p. 244, and also *Nemitsas Industries Ltd. v. The Municipal Corporation of Limassol & Another* (1967) 3 C.L.R.

20 134; *Savvas Hadjigeorghiou v. The Republic, through the Educational Service Committee* (1974) 3 C.L.R. 436, at p. 445; *Michae- loudis & Another v. The Republic, through The Educational Service Committee* (1979) 3 C.L.R., p. 56 at pp. 71–72).

In the case of *Panos Papanicolaou (No. 1) v. The Republic, through the Minister of Health & Others* (1968) 3 C.L.R., p. 225, at p. 232, Triantafyllides, J., as he then was, after referring to the nature of the decision challenged in that recourse, had this to say:

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“..... therefore, as it has been stated already, it can be

30 attacked by recourse, on its own, so long as the said composite action has not yet been completed by a final act (see Kyriakopoulos on Greek Administrative Law, 4th ed., vol. C. pp. 98–99, and also the Decisions of the Greek Council of State 1156/1937, vol. 1937 III p. 951, at p. 954

35 and 1336/1950, vol. 1950 A p. 1076, at p. 1077)”.

Relevant also is the approach to be found in the case of *Vassiliou & Others v. The Republic, through The Educational Service Committee* (1969) 3 C.L.R. 417, where with regard to the preparation of a priority list for appointments in the Educa-

40 tional Service, Triantafyllides, J., had this to say at p. 425:

“Bearing in mind the fact that this list was decided upon

as a final priority list, crystallizing the rights of candidates to be, then, appointed, and that it was not only published as such, but that it was, also, actually, relied upon for the purpose of making the relevant appointments, I cannot but find that the list was indeed an executory act which could be challenged by recourse, in that it produced a certain definite legal situation directly affecting those concerned.

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On the other hand, there is no doubt that such list was part of the composite administrative action which resulted in the said appointments.

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Once this is so, I am of the opinion that, after the appointments were made, the list lost its executory nature and, therefore, Case 327/68, which was filed before the appointments, could not be proceeded with thereafter, as it was deprived of a subject-matter that could be attacked by recourse, viz. the list as an executory act.

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In this respect useful reference might be made to the Conclusions from the Jurisprudence of the Greek Council of State (1929-1959) p. 244. Also, to Decision 648(56) of the Greek Council of State; in that case the facts were different from those of our Case 327/68, but it is a useful illustration of a situation where an originally executory act lost, due to subsequent developments, its executory nature”.

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Finally, reference may be made to Tsatsos Recourse for Annulment 3rd edition, paragraph 65 at pp. 151-152 in which the legal position is aptly summed up.

“Οσάκις πρόκειται σύνθετος διοικητική ενέργεια, προκύπτει τὸ ζήτημα, ποῖα πράξεις ἐκ τῆς ὄλης σειρᾶς τῆς ἀποτελούσης τὴν σύνθετον ταύτην διοικητικὴν ἐνέργειαν εἶναι προσβλητῆ.

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Ἐξεταστέον εἶναι πρωτίστως, ἐὰν ἡ παράγουσα τὸ ἔνομον ἀποτέλεσμα σειρά πράξεων ἐπιδέχεται κατάτμησιν, ἐὰν δηλαδὴ αἱ πράξεις αὗται καὶ διακεκριμένως λαμβανόμεναι κατέχωσι τὸ γνῶρισμα τῆς ἐκτελεστότητος. Μόνου ἐν καταφατικῇ περιπτώσει ἔχει λόγον ὁ ἀποχωρισμὸς ἐκάστης πράξεως ἐκ τῶν συναποτελουσῶν τὴν ὄλην σύνθετον ἐνέργειαν. Πρὸ τῆς περατώσεως τῆς συνθέτου διοικητικῆς ἐνεργείας

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ἐκάστη ἐκ τῶν βαθμιαίως συναρμολογουμένων πράξεων διατηρεῖ τὸν ἐκτελεστὸν αὐτῆς χαρακτῆρα καὶ εἶναι προσβλητᾶ κεχωρισμένως.

5 Ἄφ' ἧς ὁμως ἡ σύνθετος διοικητικὴ ἐνέργεια περατωθῆ, ἀποβαίνει ἀπαραδέκτος ἢ προσβολῇ δι' αἰτήσεως ἀκυρώσεως τῆς ἀρχικῆς ἢ μεμονωμένης τῶν ἐνδιαμέσως πράξεων, αἰτινες ἀποβάλλουσι πλεόν τὸν αὐτοτελῶς ἐκτελεστὸν αὐτῶν χαρακτῆρα. Προσβλητῆ ἐφεξῆς εἶναι μόνον ἢ ὅλη σειρά τῶν οὕτω διὰ τοῦ ἀποτελέσματος, εἰς ὃ ἀπέβλεψαν, συνεχο-
10 μένων πράξεων. Προσβαλλομένης δὲ τυχὸν μόνης τῆς τελικῆς πράξεως θεωρεῖται συμπροσβαλλομένη ἢ ὅλη σύνθετος διοικητικὴ ἐνέργεια καὶ τοῦτο διότι μετὰ τὴν περάτωσιν τῆς συνθέτου διοικητικῆς ἐνεργείας αἱ προηγηθεῖσαι τῆς τελικῆς μερικώτεροι καὶ πρότερον αὐθύταρκοι πράξεις
15 ἀπόλυσι τὴν αὐτοτέλειαν αὐτῶν".

In English it reads:

20 "Whenever there is a composite administrative action, the question arises which act of the whole series constituting such composite administrative action can be the subject of a recourse.

In the first place it has to be examined if the series of acts producing the legal results is capable of being cut into pieces, if in other words these acts taken separately have the characteristics of being executory. Only in the
25 affirmative instance there comes into play the separation of each act from those constituting the whole composite action. Before the completion of the composite administrative action each of the acts which by stages compose it, preserves its executory character and is capable of being
30 separately challenged by a recourse.

When, however, the composite administrative action is completed the challenge of the original or isolated intermediate acts which lose their individual executory character, becomes unacceptable. Capable of being the subject
35 of a recourse is thereafter the whole series of all consecutive acts which aimed at the achieved result. And when only the final act is challenged, the whole composite action is considered as challenged at the same time and this because after the completion of the composite administrative

action, those preceding the final act which were partial and independent lose their self-contained character”.

In the present case, as it has already been pointed out, there has been a series of independent acts, the one considered as a legal prerequisite to the other, which lost their individual character after the final act of appointment. In this way the act of the nomination lost its individual executory character and could not thereafter be by itself the subject of a recourse. For this reason Recourse No. 328/78 has to be dismissed. Nevertheless, the legality of these nominations will have to be examined as part of the examination of the whole composite action as by challenging by Recourse No. 90/79 the final act, the whole of such composite action of the administration is considered as challenged.

Having dealt with the preliminary legal objections raised, I turn now to the examination of the substance of the *sub judice* acts. It is the case for the applicant that the respondent Authority failed in its paramount duty to select the best candidate for each new post. In that respect I was referred to the case of *Michael Theodosiou v. The Republic* 2 R.S.C.C. p. 44. It was contended that the applicant was the best candidate for appointment to the post of Assistant Chief Commercial Officer (Marketing) and this because during the eight years immediately preceding the nominations and appointments in question, the applicant served in the Commercial Department of the Authority at district level and at its Head Office, and that on account of such posting he acquired the necessary experience and aptitude for dealing with marketing matters and has become a specialist in the performance of duties pertaining to that field.

It was further argued that the applicant is senior by a year and has longer experience than interested party C. Ioannou, that he has obtained the authorization of the respondent Authority to operate its 11KV, 66KV and 132KV system, whereas the interested parties Andreas Charalambides and Costas Ioannou have not obtained such Certificate of Authorization. Whilst on this point it may be mentioned that in the minutes of the Staff Relations Committee meeting dated 22.6.1971 reference is made to this situation and the explanation given is that because of the increased obligations of the respondent Authority and the absence of a sufficient number of engineers, had not been

possible to afford the opportunity to engineers to obtain such certificate. This shows that it was not through the fault of the employees of the Authority but of the Authority itself and its general needs that certain of them did not obtain this Certificate of Authorization.

Another ground relied upon was that the respondent Authority failed to take into consideration the facts which were material at the time of such selection, that is at the time the subject appointments were made and they took into consideration facts which were material and existed at the time of the nominations. The answer to this argument is that the selection was done at the time of the nominations but the appointments having come later completed the process without that meaning that no real selection and no proper exercise of discretion did take place at the time when the decision to make the appointments was taken. This appears from the minutes of the respondent Authority of the 12th December, 1978 (*exhibit 8*). It is stated therein that the appointment of the nominated officers appearing on the attached thereto list and recommended by the management for appointment to the posts of the new organization structure and the introduction of new salary scales was thereby approved with effect from the 1st January 1978. This is not a mere rubber stamping by the respondent Authority, as claimed by the applicant, of the decision taken for the nominations of the interested parties some months earlier.

The totality of the circumstances as appearing from the relevant minutes which have been quoted earlier in this judgment and the personal files of the parties, show that the subject decisions were taken after a proper inquiry was carried out and that nothing else but material facts were taken into consideration in reaching the subject decision which is a duly reasoned one. The respondent Authority exercised its discretion in the circumstances properly. One should not lose sight of the fact that in selecting the most suitable candidate for appointment to high office in the administrative structure, the appointing authority is vested with quite wide discretionary powers as stated in the case of *Frangos v. The Republic of Cyprus, through The Public Service Commission* (1970) 3 C.L.R. p. 312, by reference to the decision of the Greek Council of State No. 2338/1964. Moreover the seniority of the applicant by a year obviously could not prevail even if it was considered to be a marked one as not all other factors were equal. The recommendations of the

management and the views of the standing sub-committee together with all other relevant factors obviously carry the day in favour of those selected for nomination and finally appointed.

I consider pertinent to conclude this judgment by quoting what was stated in the case of *Savvas HadjiGeorghiou v. The Republic, through the Educational Service Committee* (1974) 3 C.L.R. 436 at p. 445, by Malachtos J. 5

“It is the paramount duty of a public authority or organ in effecting appointments or promotions to select the candidate most suitable, in all the circumstances of each particular case, for the post in question (*Michael Theodossiou and The Republic through the P.S.C.*, 2 R.S.C.C. 44). The selection of a candidate for promotion is within the powers and discretion of the authority or organ concerned conferred upon it by law. When the authority or organ concerned has exercised its discretion in reaching a decision, after paying due regard to all relevant considerations, and without taking into account irrelevant factors, the Court will not interfere as to the exercise of such discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provisions of the Constitution or of any law or has been made in excess or abuse of powers vested in the authority or organ concerned. 10 15 20 25

The exercise of the discretion of the administration is not subject to the control of an administrative Court except in cases where there exists an improper use of the discretionary power, or a misconception concerning the factual situation or the non taking into account of material factors (*Costas Vafeadis v. The Republic of Cyprus, through the P.S.C.*, 1964 C.L.R. 454)”. 30

I fully agree with the aforesaid approach and I find that in the present case the respondent Authority exercised its discretion properly and in accordance with the general principles of Administrative Law relevant to the issue of the exercise of a discretion in such circumstances. This recourse also fails. 35

For all the above reasons both recourses are dismissed but in the circumstances I make no order as to costs.

Applications dismissed. No order as to costs. 40